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IN THE

High Court of Chancery,

SHEWING

The Whole Method of Proceedings, according to the present Practice, from the Bill to the Appeal inclusive:

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ALSO

The best Forms and Precedents of Bills, Answers, Pleas, Demurrers, Writs, Commissions, Interrogatories, Assidavits, Petitions and Orders;

TOGETHER WITH

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Other MATTERS useful for Practisers.

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By JOSEPH HARRISON of Lincoln's Inn, Efq;

In Two Columes.

VOL. I.

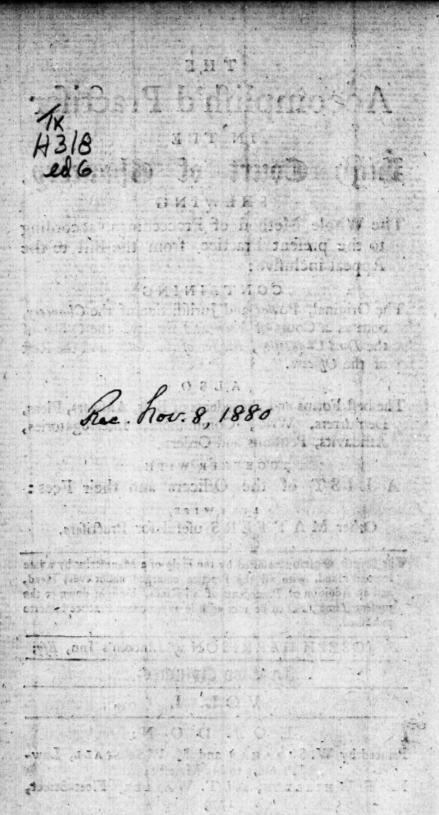
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A TABLE of the Days of bearing Caufes, Motions, Ere. THE RIGHT HONOURABLE STOPES

By the Lord Congestion. Tenest Tone E A Toro A me cor Wanter of A Toro on I kend frilles are days for healing Cantonan Wigh Capter.

LORD THURLOW,

BARON OF ASHFIELD,

Every Von H H I'm is a day for Monoes, very cope in the ace or last week of the Term, and then it

COUNTY OF SUFFOLK,

LORD HIGH CHANCELLOR

TO CATION,

GREAT BRITAIN

No Motions for heard after the in commel Soul. Every Surance in Term is many for Lebestines. MY LORD, at al substitute of the books

S the following sheets peculiarly relate to the most important department of your very high office, I presume to inscribe them to your Lordship; not with a view to instruct, but solely to felicitate the Suitors of the Court, that integrity and abilities are once more to be found in the prætorian Seat of Justice; and that " non, fi " male nunc, et olim sic erit."

I am.

My Lord, with the most profound respect, your Lordship's most dutiful, Trinity Vacation,

1778.

A Solicitor of the Court.

Kehesenne.

. Environment

A TABLE of the Days of bearing Causes, Motions, &c. before the Lord Chancellor and the Master of the Rolls.

By the Lord Chancellor. TERM-TIME.

Causes.

IN Term-time, every Monday, These day, Wednesday, and Friday, are days for hearing Causes at West-minder by the Lord Chancellor.

minster by the Lord Chancellor.
Every Tuesday, Thursday and Saturday in Termitime,

Seal-days. | are Seal-days.

Demorrers.

Petitions.

Pauper-

Causes.

Caufes in

Vacations.

Petitions.

Motions.

The first and last days of the Term, are days for

fealing Writs and Motions only.

Every Thursday in Term is a day for Motions, except in the first or last week of the Term, and then it

Motions. Jis a day for Caufes,

All the days in Term, when the court fits, aredays for common Motions, which are moved after the Causes are heard, just before the rising of the court.

VACATION.

Motions in In the Vacation, the general Scal-days only, as apthe Vacation. Pointed by the Lord Chancellor, are days for Motions. No Motions are heard after the last general Scal.

Rehearing.

Exceptions,

Pleas, and

Every Saturday in Term is a day for Rehearings.

Wednesdays and Fridays in the afternoon in Term,

Lord Chancellor fits in Lincoln's Inn Hall on Exceptions,

Pleas and Demurrers.

The next day after the last Seal, both before and after the Term, is usually appointed for Pecitions.

There are also other days of Petitions usually appointed by the Lord Chancellor.

At the ROLES.

e the shire a aft the Court

Causes.

In Term-time, every Monday, These day, and Saturday, are days for hearing causes at the Rolls by the Master of the Rolls in the afternoons.

The second Saturday in Term is always a day for hearing Pauper-causes at the Rolls.

AFTER TERM.

The first week after the Termy the Master of the Rolls sits all the Mornings on Causes, and towards the third Seal, in the Asternoons.

There is also a Day of Petitions at the Rolls after the Term, which His honour appoints.

The next morning after the Term, Motions are allowed to be made at the Rolls, by the Lord Chancellor.

OF

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OF

CHANCERY.

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CHAP. I.

Of the ordinary court in Chancery proceeding according to Law; and also of the extraordinary court proceeding according to Equity.

administered; and it is called curia, saith Valla, a cura; for that care is to be taken therein for the deciding of controversies: But it seemeth rather to be called curia, an assembly, or the place of assembly, like as the king's court was first called curia, because the court of justice was there first holden.

It is the opinion of feveral learned authors, that the Chancery had its name originally from certain bars laid one over another cross-wise, like a lattice, wherewith it was environ'd to keep off the press of people, and not to hinder the view of those officers who sat therein; such grates or cross bars being by the Latins called Cancelli. See Cand. Brit. celv. Dudg. Orig. Jurid. 32. C. 16. Cow. Interpret. Verb. Chancellor.

Vol. I. B

The court of Chancery is the king's prerogative royal: and all other courts (except the Parliament) are inferior to it.

5. 9 Ed. 4. 15. 14 Ed. 4. 7. (6) Stan. tol. 65. b. Pl. Com.fol. 72.

And in the Chancery are two powers or courts, the one (a) 8 Ed. 4. (a) ordinary, the other (b) extraordinary; the former is a common law court, and the proceedings therein are according to the laws and statutes of the realm, called the petty bag fide; the latter is a court of equity, and proceeds ac-Prær. c. 20. cording to equity and good conscience. Vide 2 Infl. 552. 4 Inft. 79. Lambard's Archaion, 58, 78. Elef. Objerv. Office Lord Chan. 44, 45.

With respect to the ordinary or legal court, it has been a court of record time out of mind, and held coram domino rege in cancellaria, on the petty-bag fide. 2 Inft. 552, &c. 4 Inft. 79. Lev. 142 .- Anno 9 Ed. 4. All the judges of England did affirm, that the Chancery was the king's court, and had been time out of mind; fo that it was im-

possible to trace its original.

The commencement of this court is much more ancient than the court of equity: And those authors who hold that the court of Chancery came in with William the Conqueror are certainly mistaken; for both the Britist and Saxon kings had their chancellors and court of Chancery, out of which writs remedial issued as at this Day. 4 Inft. Camd. Brit. cclv. And one Walfton had a pardon inroll'd in the court of Chancery, Anno 872. Reg. Alfrido. 4 Inft. 78, 79. As for its antiquity in this realm, it is of (c) Discourse not less, as our learned Seldon (c) conceives, than king of the Name Ethelbert's time, who was the first Christian king of the and D gnity Saxons. Dudg. Orig. Jurid 32. C. 16.

That the court of Chancery proceeding according to law, by him pre- hath had jurisdiction time out of mind, seems settled by the fented to Sir best authorities. 9 Ed. 4. 53. b. 4 Inft. 77. Hob. 63.

12 Co. 113, 114.

This court hath (d) jurisdiction to hold plea of feire facias for repeal of letters patent, at the fuit of a former patentee, when they are granted to several persons for one and the fame thing: But when they are against law, or granted upon a falle suggestion, the king may have a scire facias to repeal his own grant by letters patent. [See 18 Hen. 6. t. 1. 3 Ed. 6. c. 4. 13 Eliz c. 6.] Here also it may hold plea of petitions, monstrans de droit, (i. e.) for a subject to be restored unto lands, &c. which he shews to be his right. [See 34 Ed. 3. cap. 14. 36 Ed. 3. cap. 13. 4 Rep. [54] Traverses of offices, i.e. to prove that an inquisition taken

Chancellor,

Francis Bacon.

(d) 4 Inft. 79, 80, 81, 82, 87, 88.

Lamb. Archaion. 58. Elef. 29.

raken of lands or goods is defective and wrong. There may also be a fire faciar upon recognizances in this court. [See But the execution upon a statute-staple, Gr. may hold plea tof all personal actions by or against any officer or minister of this court, in respect of their service or attendance, and by acts of parliament, of feveral offences 4 Inft. 80. and causes.

This court is officina justicia, out of which all original The Chanwrits, all commissions of charitable uses, bankrupts, sew- cery in our ers, ideots, lunaticks, &c. that pass under the great seal, old books is do iffue, and for which it is always open. Vide 4 Infl. na brevium

80, 81.

& remedialium; where all original writs were devised and framed.

This (e) court cannot hold plea of (f) land, but it may (e) a And. of trefpass or debt. 26 Hen. 6. 32. (f) And therefore where a fuit was in the Chancery of Chefter for a woman's jointure, a prohibition was granted, Sid, 189. Pl.

The process is under the great seal, and is now in Eng. See 6 G. lift, as are all other law proceedings, by 4 G. 2. c. 26. But 2. c. 6. the proceedings in this court are not inrolled in rolls, but remain in filaciis, being filled up in the office of the petty-

bag. 4 Inft. 80.

In profecuting causes, if the parties descend to iffue, this court cannot try it by a jury; but the Lord Chancellor delivers the record with his (g) proper hands into the King's (g) An offi-Bench, to be tried there; because for that purpose both ing the recourts are accounted but one, and after trial it is to be (b) cord is held remanded into Chancery, and there judgment to be given; sufficient But if there be a demurrer in law, it shall be argued and vide Jefferson and Dawson, adjudged in Chancery. 4 Inft. 80.

The King and Stoughton, 2 Saund, 157, and the prince's case, 8 Co. & Mich 1700. Between the king and the warden of the Fieet. (b) But quere, Whether the constant practice has not been to give judgment in the King's Bench. Vide All. 16, 17. Stil. 84, 94. Cro. Jac. 12. 2 Roll Abr. 349, and 2 Saund. 27. where it is resolved, that if there be a demurrer for part, and issue for part, the whole record shall be transmitted into B. R. and the judgment given there; and a Saund. ag. S. P. and there faid, that the books cited 4 Infl. 80. do not warrant the opinion. But if the iffue is to be tried otherwife than by a jury, as by the bishop's certificate, &c judgment shall be given in Chancery. W. Jon. 80.

Robert Parving Lord Chancellor to Edward the Third, delivered, with his own hands a record into the Court of King's Bench, 17 Ed. 3. in which year he died fitting and arguing [See 2 Inft. 552. 4 Inft. 79, 99.] in the Court of Common Pleas amongst the justices there, as is recorded in the Year Books of that year. See Year Book of 17

Ed. 3. fol. 11, 14, 23. pl. 9. 37. pl. 30. Spelm. Gloff, 111. B 2

When

(1) 4 Inft.

When there is a demurrer upon part, and iffue upon part, the record being in K. B. that court ought to give judgment, because there can be but one execution; and if the record come thither entirely, they cannot fend it back again. Vide 2 Saund. 23, 24, &c. Med. Rep. 29. Sid. 438. Lev. 283, 284. though it was faid, that the Chancery might have given judgment upon the demurrer before the record came into K. B. 2 Keb. Rep. 584, 587, 588, 608. Lill. Abr. 499.

Hill. 1682. Rex ver. Cary, A writ of error was moved for into B. R. on a judgment in the petty-bag, but denied. (i) Dy. 315. The ford keeper North was pleased to think (i) Dyer and (k) Coke's opinion ill founded, and thought the jurisdiction of the Chancery on the Latin fide not subject to be controlled (1) That up- by K. B. and faid he would (1) injoin all fuch writs of error.

on a judg- Vern. 131.

ment given in this court, a writ of error doth lie returnable into the King's Bench. Vide 13 Ed. 3. 25 Aff. 24. Dyer 315. Plow. 393. And by Lord Coke, the file of the King's Bench is Coram Rege, but the file of the Chancery is Coram Rege in Cancellaria, and addition probat minoritatem. 4 Inft. 80.

> Having considered the ordinary court in Chancery, proceeding according to law: I shall in the next place speak of the extraordinary court, proceeding according to equity.

With respect to the rise of this court of equity; if we do but consider that the administration of justice, in this realm, is the prerogative of the king, who is the immediate minister of justice under God, and sworn at his coronation to deliver to his subjects aquam & redam justitiam, we may easily perceive a necessity of erecting this court. For inasmuch as positive written laws consist of general institutions grounded upon that which happeneth for the most part, the utmost extent of human wisdom being incapable of foreseeing every particular thing which time and experience doth beget, there was of necessity variety of particular cases frequently happening, wherein no proper remedy could be given by the ordinary courts proceeding according to such politive laws; and many times the rigour of the law proves injuffice and oppression: And as the judges in our courts of law, are bound by their oaths to observe the strict rules of law, tho' sensible of a manifest injustice, therefore to supply the want, and relax the rigour of the politive laws, recourse was had to the king, in order to obtain relief in fuch cases, and in such manner, as should appear to be just and equitable. Vide Brad. 108. C. 10. Black. Com. 92. Note:

Note: It appears by the laws of king Edgar, that there was a power by law veffed in the king to moderate the fummum jus according to equity and good conscience.

This court, faith my Lord Elesmere, may be called the king's high court of conscience, made especially to redress (m) private causes, such as by extremity of law cannot (m) Lamb. have agreeable end to equity, by reason of circumstances Archaion. hindering; wherein it is to be noted, that confeience is fo 79, 80, 81. regarded in this court, that the laws are not neglected, but they must both meet and join in a third, that is in a moderation of extremity. Here the rigour of the law is temper'd with the sweetness of equity, which is nothing but mercy qualifying the rigour of justice : Nam ipfa etiam leges enpiunt ut jure regantur, i. e. ut levi & facili at benigna interpretatione temperentur.

For the orginal of this special court, it is to be considered, that in the time of the Saxons and of the Danes, the king by himself did hold a high court of justice, wherein he fat in person, and did judge not only according to meer right and law, but also after equity and conscience; and this is confirmed by the law of the (n) Saxon king Edgar, (n) Saxon viz. Let ho man feek to the king in matter of variance, un- laws, fel. 79. less he cannot find right at home; but if the right be too heavy for him, then let him feek to the king to have it lightened. And the like to this law is also among the laws

of Canutus the Dane, fol 108. Elef. 22.

Originally the method of application for relief was by bills, or petitions to the king, fometimes in parliament, and fometimes out of parliament, commonly directed to the king and his council.

In the time of king Edward I. Matters of grace were Lamb. Aronly determinable by the king, or by such as he appointed, chaion. 62, and not in any fix'd or established court of equity; so that 63. those who fought relief in equity were fuitors to the king ; Lev. 242. himself, who being affisted with his chancellor and council did mitigate the feverity of the law in his own person, when it pleased him to be present, and (e) did in his absence refer (e) Lamb. petitions fometimes to the chancellor alone, and sometimes Archaion, to the chancellor and some other of his council.

At what certain time the court of Chancery first exer- 23, 26. cifed an extraordinary power of acting according to equity, feems from the great distance and obscurity of the matter extremely doubtful. But it is agreed that its commencement is not so ancient as the ordinary court before spoken of. And I think none of the ancient lawyers, who fpeak of

B 3

this Chancery, ever mentioned it as a court of equity or conscience; but always as a court of ordinary jurisdiction to determine causes according to the rules of the common law.

My Lord Coke fays, that the first decree in Chancery that he finds made by the chancellor, was in 17 R. 2. Rot. Parl. 17 R. 2. n. John de Windsor against Richard le Scrope, 2 Inft. 553. 10.

4. Inft. 83.

And Lambard, in his Archaion. 75, fays, that he doth not remember that in our reports of common law, there is any mention of causes before the chancellor for help in (p) Vide 2 equity, but only from the time of (p) king Henry IV. in whose days, by reason of intestine troubles, seoffments to uses did either first begin, or else grow common and familiar; for remedy in which cases of uses chiefly the court of Chancery was then fled unto as the common altar of help and refuge. But we find no causes in this court reported in our books before the reign of Hen. 6. [4 Inft. 82.] Such causes, saith Dugd. as fince that time were heard in this court, having formerly been determined in the Lords house of parliament, as may feem from the number of petitions in parliament, of that nature, which are yet extant. Dugd. 37. And my Lord (9) Elesmere writes, that there is no record of proceedings, by way of petition, or (r) English fice of Lord bill, before that time, to be found in the office of records: Chancellor, But records, reports, and cases, are plentiful enough in its ordinary jurisdiction long before.

(q) Obser. on the Of-57. 58. (r) Anno

Inft -552.

Dugd. 37-

20. H. 6.

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there are also some bills, in French, as appears by records of that year. Eles. 45.

The most probable opinion, as I humbly conceive, feems to be that the equity fide of the court of Chancery began in the reign of Ed. 3. [Vide 20 Ed. 3. 36 Ed. 3. Lamb: Archaion. 73, 74. Lev. 241, 242. Lil. Abr. 496.

Elef. 28.]

Lambard, in his Archaion. 62, fays, That when the courts of Chancery and King's Bench ceased to be ambulatory, and became settled courts in a certain place (which was 4 Ed. 3.) that then the king committed to his chancellor, together with the charge of the great feal, his only legal, absolute, and extraordinary pre-eminence of jurisdiction, &c. But the writ or proclamation, 22 Ed. 3. directed to the theriffs of London, by them to be made publick. feems to have given it an establishment; by which the king commanded that all business, relating as well to the

the common law of the kingdom, as to fuch by special grace cognizable by him, should be profecuted before the chancellor, &c. And this delegation afterwards received the fanction of an act of parliament, 36 Ed. 3. which act, as some think, first gave it authority, Vide Lev. 242. That this court did from this time exercise a jurisdiction in matters of equity, feems evident from the parliament rolls in the reign of Ed. 3. Vide Rol. Abr. 372. And the complaints made in parliament of the exercise of this power, to the subversion of the common law. wide Ret. Parl. Anno 2 R. 2. _____ 7 R. 2. And this occasioned the flatute 17 R. 2. cap. 6. which reciting that people were compelled to come before the king's council, or in the Chancery, by writs grounded upon untrue suggestions, enacts, that the Chancellor for the time being, presently after such suggestions are duly found, and proved untrue, shall have power to ordain and award damages according to his diferetion, &c. which, instead of diminishing, increased the jurisdiction of this court.

A commission or letters patent, without an act of parliament, cannot raise a court of equity; but a court of equity may be held by prescription. 4 Inft. 87. 12:, 213, 242, 248.

12 Rep. 113. 2 Roll. Abr. 164. Hob 63.

This court proceeds secundum æquum & bonum, and moderates the rigour of other courts, which are bound to observe the first letter of the law; and it rather regards the intention than the words of the law, and is of most excellent use and benefit to the nation, in exerting power, and granting relief, in cases wherein the subject is without remedy in the courts of common law : But generally, where matters are determinable by the common law, there ought not to be relief in Chancery. 15 H. 6. * cap. 4. * See Obser, 39 H. 6. 4 Inft. 83. 3 Chan. Rep. 70. fed vide Treatife on the Staof Equity, fol. 4. And equity cannot regulate or control tates in 410. the maxims of the common law, altho' there may be some fol, 324. inconveniencies in them, for that would be to exercise a legislative authority, and make a new law. MSS. Ca. in Cha. Lord Bath against Sherwin, Trin. 8 Anne. Vide 10 Mod 1. Gilb. Eq. Rep. 2. It is observable that in many cases this court will give relief against, besides, and beyond the rules of common law, so as the example introduce no general mischief. [Vide Danv. Abr. 745 to 766.] In short, every matter that proves inconfishent with the intention of the legislator, or is contrary to natural justice, may be relieved bere. Anciently, indeed, forfeitures of penalties and conditions

conditions were not here relieved, neither was an accident preventing the performance of a condition, and incurring a forfeiture. But now it is every day's practicle to relieve in such cases, without such limitation, where the damage is under the penalty, and the advantage accruing to the perfon taking benefit of the condition. And this is founded upon an unerring rule of judice; for there is no injury to the person unto whom the condition or penalty is forseited, because he is in no worse case, than if the condition had MSS. Ca. in Cha. Lord Bath against been performed.

· Sherwin, Trin. 8 Anne.

(s) 4 Inft. 373. (r) MSS. Ca, in Cha. L. Bath againft Sherwin, Trin, \$ Anne. · 4 Inft. 213. 1. Dany, Abr. 749.

The jurisdiction and power of this court of equity is of vaft extent, tho' no court of (s) record, and (t) it is di-84. Crompt. vided into three heads; fraud, conscience, and accident. In Jur. 52. 2. But he a Rol. Abr. this court the Lord Chancellor himself may sue: But he cannot make a decree in his own cause. Here relief is often given for or against an infant, notwithstanding his minority; for or against a married woman, notwithstanding her coverture. In some cases she may sue her husband, as for alimony or maintenance, when they are parted, &c. And the may be compelled to answer without her husband. Here executors may fue one another, or one executor alone without the rest may be sued; but he shall be charged for no more than he has received.

This court acts chiefly in matters of fraud, accidents, and

(w) Weft's sym. of Chancery, feet 18, 19. 4 Inft. 84. Danv. Abr. 749, 750, 751, 752, 753, 754, ac. 769. 770, 771, &c. Vide Gilb. Eq. Rep. 2.

truffs. (a) All frauds and deceits, for which there is no remedy at common law; all accidents, as to relieve obligors, mortgagors, &c. against penalties and forfeitures upon statutes, bonds, mortgages, &c. where the intention was to pay the debt or duty, but some extraordinary matter happened to disable the debtor; and all breaches of trust and confidence, not executed, by the 27 Hen. 8. c. 10. concerning uses, are properly cognizable here; for trutls are fo intirely under the jurisdiction of courts of equity, that the courts of law can take no notice of them. Vide 10 Med. 103. Also this court will afford relief, when unreasonable engagements have been made, or engagements without confideration; where a charge lies upon one man alone at common law, to make others contribute to the charge; it will compel men to perform their agreements; reduce the general cultoms of a manor to a certainty; relieve a copyholder against the ill usage of the lord; ascertain fines of copyholders; decree for a liberty of common, alhing, &c. and upon every interruption order an Mountage attachment;

attachment; decree for inclosures to be made of lands and grounds that are common, or for inclosing lands in a parish, forcing the parfon to confent upon an equivalent where others agree; decree for recovery of money or land given to charitable uses, and misemployed; diftinguish a man's land confounded with others; decree that one shall have the tuition of a child; force unreasonable creditors to compound with an unfortunate debtor, not by vill husbandry's make executors and others give fecurity, and interest for money that is to lie long in their hands; order the performance of a will, especially if it concerns land; confirm a ricle to land, &c. tho' one hath loft his writings by which he should make out his title; make conveyances, defective through fraud or mistake, good and perfect; enforce the enrolment of a deed, if there is need for it; force men to come to an account with each other; avoid the bar of an action by reason of the statute of limitations; decree for things in action upon affignment to an affignee upon confideration, &c. (*) In fuch like cafes, the court may, without any regard (*) Crompt. to form or mispleading, proceed to a decree according to Nor. 42. b. equity and good conscience.

Note; It has been held, that a court of equity could not decree against a maxim of law, Rol Abr. 376. and therefore it has been adjudged that one executor could not compel the other to account. Rol. Rep. 263. And that one jointenant could not sue his companion. Rol. Abr. 376. And that if an obligee loft his bond, he was without remedy. Rol. Abr. 373. Where the lessor entered upon the leffee, and suspended his rent, it was held that he had no remedy in equity. Lat. 149. So where the party became remediless by his own act, as by paying money without an acquittance. Rol. Abr. 374. So where one made a promife for valuable confideration to make a leafe; and it was held that the party could not fue on this promise in equity, because he might have an action on the case. Rol. Abr. 380. But all these resolutions in the common law courts have been long fince exploded, and the constant practice is now

This court will not retain a fuit by English bill under Moseley, 101. value, except in cases of charity, nor under the 47. Pl. 31. value of 40 s. per ann. in lands, except it be for a rent-Service, &c.

This court also will restrain other courts that exceed their jurisdiction, and remove the fuit to itself by certiorari; but it will not give relief where the substance of the suit tends

otherwise.

tends to the overthrow of an act of parliament made for the public peace, or to the overthrow of any fundamental point of the common law, or to take from other courts their peculiar jurisdiction; though judgments and sentences in other courts may be examined in equity. [See the 4 H. 4. c. 23. and upon that Stat. Dr. & Stud. Dial. 1. c. 18. 15 H. 6. c. 4. and the 3 Infl. 119, 123, 124. 4 Infl. 84, 85, 86, 87. Danv. Abr. 745 to 766.

An executor pays bond debts before money on a decree against his testator. Per cur. clearly, He shall not be allowed those payments in his account, because a decree here is equal

to a judgment at law. Prec. in Chancery 179.

Decrees of this court are equal with judgments at law; for as judgments at law may be executed by a capias ad satisfaciendum to take a person, so similar to that are attachments for not performing decrees. Cases in Equity, temp. Talbot 222.

It is now the established practice, that this court has power to give relief after a judgment at law. Vide 3 Infl. 123. 4 Infl. 36, 91. Dal. 81. Moor. 836. Pl. 1129. 916. Pl. 1300. Leon. 241. 2 Leon. 115. 3 Leon. 18. 2 Brownl. 97. Godb. 244. Rol. Rep. 71, 72, 252. 2 Bulfl. 194, 284. 3 Bulfl. 118, 120. Lit. Rep. 37. Cro. Jac. 335, 344. March 54, 83. Cro. Car. 595, 596. Stil. 27. Sid. 463. Mod. 60. Hard. 23, 123. 2 Bulfl. 301, 302. 3 Bulfl. 115. Lev. 241.

It can bind the person, and + sequester the profits of the

were first estate.

+ Seques-

introduced by Sir Nie. Bacon in Queen Elizabeth's reign, before which this court found fome difficulty in enforcing its decrees, and for some time after was controlled by the common law courts. Vide 4 Inft. 84. Rol. Rep. 86. 3 Bulft. 34. Rol. Rep. 190. Lit, Rep. 166. Cro. Jac. 341. It sequestrations are taken away, the justice of this court would be elusory, and there would be no effectual means of bringing suitors to the fruit of their suits. So that they are a necessary process of this court. Mich. 19 Car. 2. Hide against Petit, Chanc. Cas. 91. 185. 2 Freem. 125. Pl. 142.

If a person sues in equity and at law for the same thing, the practice is either to dismiss his bill, or oblige him to make his election. Vids Carey 71. But he may proceed in equity for mesne profits, and in ejectment at law for the possession of the lands. Vern. 105.

Equity will not fuffer a penalty to be demanded, if the party will perform that for the non-performance of which

the penalty is given, 2 Chan. Ca. 88.

It will not affift a forfeiture. When a parson himfalf brings a bill for tithes, he must waive the forfeiture. But the executor of a parson is not intitled to a forseiture upon the statute of Ed. 6. Vern. Rep. 60.

Rquity will not give relief in matters proper by que war-

Attorney General and Reynolds & al'.

Nor will it suffer a party under pretence of a trust, or any other of its own notions to elude a beneficial law. Pasch. 1706. Attorney General and Hindley. Eq. Cas. Abr. 131.

It will give relief in matters where the party may recover damages at law. Hodges and Everard, Cases in Equity

Abr. 132.

Will quiet a voluntary devisee in the possession of his lands. Hill 1702. Woodgate and Woodgate. 11 Vin. Abr. 61. Pl. 6.

Will compel a discovery of goods in the hands of a third person, in order to subject them to a judgment. Mich. 1705. Taylor and Hill. 8 Vin. Abr. 543. Pl. 5.

A bill in equity lies to vacate letters patent obtained by

fraud. Attorney General versus Vernon. Vern. 277.

Will relieve against an indirect conveyance, though exe-

cuted by deed and fine. 2 Vern. 307.

A will as well as a deed may be fet afide in Chancery for fraud or circumvention. Mich, 1700. Welby and Ther-

naugh, Prec, in Chanc. 123.

But it has fince been decreed in the House of Lords, that a will of a real estate could not be set aside in a court of equity for fraud or imposition, but must be tried at law on devisavit vel non, being matter proper for a jury. July 28th 1728. Bramsby and Kerridge. 8 Vin. Abr. 167. Pl. 6, in Notes. 2 Eq. Cas. Abr. 406. Pl. 4.

Let us now confider the jurisdiction of Chancery in foreign parts.

And here we may observe, That the Chancery will decree one joint-tenant of lands in Ireland his share of the profits, though it annot award a commission to make partition of lands which lie in Ireland. Hill. 27. Car. 2. Cartwright and Pettus, 2 Chan. Ca. 214.

Cartwright and Pettus, 2 Chan. Ca. 214.

An annuity out of lands in Ireland obtained by fraud here relieved against, the parties being here. Mich 1682. between the Earl of Arglasse and Muschamp, Vern. 77. 135.

S. C. And the former resolution affirm'd by North L. K. up. on a rehearing, sand it , statistich a

So of a contract made here for land which lay in Ireland, between Archer and Profton, and cited by the L. C. Vern. 77.

If a truftee of lands which lie in Ireland lives here. Chancery may decree the truft. Mich. 1686. between the Earl of Kildare and Sir Morrice Euflace and Firegerald, Vern. 410.0 55091914 12.30 Vingo & store 11 live

A. owner of the island of Sarke, mortgaged the island to B. the plaintiff's inteffate, for five hundred years, for 500 l. The bill was that the defendant might redeem or be foreclosed. Defendant pleaded to the jurisdiction of the court, that this island was part of the dateby of Normandy, and had laws of their own, and were under the jurisdiction of the courts of Guernsey, and not within the jurisdiction of the court of Chancery (cited 4 Inft. 284.- 2 Anderfon's Rep. 115. Kelloway 202). But L. K. overruled the plea. because the mortgage was of the whole island; and for that the court of Chancery had also a jurisdiction, the defendant being ferved with the process here, & aquitas agit in perfonam. E. 1705. Toller and Carteret, Vern. 494.

A bill may be brought in Chancery to foreclose a mortgage on lands out of the jurisdiction of the court, if the person be within it. Chancery agit in personum, & non in

rem. Vide Salk. 404.

The Chancery has a concurrent jurisdiction with the Admiralty in marine contracts. Allport v. Thomas, Gilb. Rep. in Eq. 227, 228.

Proceed we in the next place to confider the jurifdiction of the court of equity in the Exchequer, and bow it interferes with Chancery. in hear and plan and an

Where a person may bring a new bill in Chancery, though his bill in the Exchequer for the same matter be

dismis'd. Vide Chan. Ca. 155, 233.

If the mortgagee brings a bill in the Exchequer to foreclose, the mortgagor may bring a bill in Chancery to redeem. Hill. 1683. between the Earl of Newborough and Wren, 1 Vern 220.

After a decree in the Exchequer, which was confirmed in the House of Lords, a new bifl brought in Chancery. Mich. 1699. Joy & al' and Braine. Vide Eq. Caf. Abr. . av. s effenteile fan elegen, by bent bet Matter

Matters relating to extents in aid are properly cognizable in the Exchequer. Pafch. 1701. Brown and Trent, 2 Vers 426. But fee Vern, 469. Capel and Brewer,

Let us now observe in the last place bow far Chancery will exert a jurisdiction in matters cognizable in inferior courts, as the Ecclefiafical courts, Univerfity courts, Chetter, &c.

Chancery in some matters has a concurring jurisdiction with the spiritual courts; and in many cases their judgments are subject to this court. Pastb. 23 Car. 2. between Kanbrough and Cock, Chan, Ca. 200.

It has a concurrent jurisdiction with the spiritual court, in allowing alimony, &c. Lady Oxenden against Sir John

Oxenden, Gilb. 1, 152, &c.

If an infant legatee fueth in the ecclefiaftical court, and afterwards in Chancery, the fuit depending in the ecclefiaffical court cannot be pleaded in bar, for there is no fuch fecurity for the infant's advantage as here, especially as to interest, and bringing in an account. Hill. 33 Car. 2. between Howell and Waldren, 2 Chan. Ca. 85.

A bill is proper in equity for a distribution of an intestate's personal estate, Pasch. 34 Car. 2. between Pamplin and

Green, 2 Chan. Ca. 95. 2 Vent. 362. S. P.

An account may be decreed in Chancery of an intestate's personal estate notwithstanding an account before taken and a distribution decreed in the spiritual court, Pasch. 1688.

between Biffell and Axtell et al 2 Vern. 47.

But a will relating to a personal estate, though it be objected that it was obtained by fraud, yet it is not examinable in Chancery after probate in the spiritual court, so long as that probate is in force. Archer and Moffe. 2 Vern. 8. Nelfon and Oldfield, 2 Vern. 76. S. P.

What jurisdiction the University courts have, wide I Vern. 212. Hill. 36 Car. 2. Stephens and Dr. Berry. 2 Vent. 362. Hill. 36 Car. 2. Draper and Dr. Crowther.

A claim of privilege must be by way of plea, but it need not be upon oath. 1 Chan. Ca. 237. The privilege of an inferior court cannot be objected to at the hearing, but must be pleaded. 2 Vern. 484.

Chancery has a jurisdiction over inferior courts of equity, A man cannot fue in the Chancery of Cheffer for a thing which in interest concerns the chancellor there. Between

Sir John Egerton and Lord Derby, 12 Co. 143.

If a man hath cause to complain in equity of a matter arising within the County Palatine of Chester, if the defendant lives out of the County Palatine, he may be fued

in the Chancery here. 12 Co. 113.

A bill was brought for an account of the profits of lands which the defendant had received in trust for the plaintiff, and for money received on bonds belonging to the plaintiff, and for writings, &c. The defendant pleaded, that the lands lay in Cheshire, and that he lived in Cheshire, in the County Palatine of Cheffer, and therefore not within the jurisdiction of this court. Precedents were searched, and on view of them a mafter certified, that though the privilege of the Counties Palatine was allowable, yet it was between parties dwelling in the fame county, and for lands there; but the plea was over-ruled. Hill. 14. Car. 2. between Edgworth and Davies, Chan. Ca. 40

CHAP. II.

Conserning the Office of Lord Chancellor,-Master of the Rolls, -and the rest of the Officers of the Court of Chancery .- And first, Concerning the office of Lord Chancellor.

HE Lord Chancellor (à cancellande, from his power to cancel Letters Patent, being the highest point of his jurisdiction) or Lord Keeper, is the chief judge of the court of Chancery. 4 Inft. 84, 88. Lambard's Archaion. 48. Elef. Obs. Office L. C. 45. Crompt. Jur. 41.

This is an office of the greatest weight and power, and requires not only the most uncorrupted probity, but confummate abilities, penetration and discernment: And it may fo far be traced up into ages past, as to discover that it has fill been an office of the first ranft. Rot. Parl. 14 Ed. 4. Numb. 26. The Chancellor is called the Chief Judge of the realm. Eles. 3, 4. And the Romans called him who had fuch an office under their Emperors, by the

name of Quaffor Sacri Palatii, and he was to be profoundly skill'd in the divine and human laws, that so he might be

able to explain them for the people,

With regard to the antiquity of this great officer, it is observable, that both the British and Saxon Kings had their Chancellors, 4 Inft. And Dugdale mentions the names of fuch Chancellors, as he could meet with from good authorities throughout the reigns of the successive Kings of the Saxon race, until the Norman conquest. Of these Unavona is the first, who is stiled Cancellarius to Offa, king of the Mercians, who began his reign in the year 758. Dagd. 33. Jan. Anglorum 127. Mat. Paris, in Vit. Abbatum, page 22. n. 10. & page 23. n. 20. Anno 758.

The election, or creation of Chancellors and Keepers, was antiently of more than one fort, and also of men of di-

vers degrees and qualities.

The constitution of Chancellor hath been of two forts, viz. by letters patent, which hath been but rarely used; and by delivery of the great feal, which delivery is to be entered upon record; wherein it is to be observed, that the Keeper of the great seal had the seal delivered in divers manners. It was delivered to the Chancellor by the King; and immediately he took an oath for the faithful exercifing the office of Chancellor, and then he sealed write therewith alone; and it was delivered to the Keeper without oath, and therefore he did not commonly feal therewith but in presence of some of the Masters in Chancery. Vide 4 Inft. 87.

And for the most part our Chancellors have been chosen by the King, durante beneplacito, and put in possession of their office by the delivery of the feal; though it is faid, that in the time of King Henry II. the manner of ordaining a Chancellor was by hanging the great feal of England about

the neck of the Chancellor elect. Camd. 131.

I shall not enter into a long discourse of those distinctions that have been taken notice of by fome authors, with respect to the office and authority of the Lord Chancellor and Keeper: For all questions are now taken away by the KingHen. Stat. 5 Eliz. and at this day there being but one great 5. had two feal, there cannot be both a Lord Chancellor and a Lord great feals, Keeper of the great feal at one time, because both are but one of gold,

one which he de-liver'dto the

Bishop of Durham, and made him Lord Chancellor; another of filver, which he delivered to the Bishop of London to keep. And note, That historians often confound Chancellors and Keepers one with the other.

one office, as is declared by the faid act. Vide 4 Inft. 88. And the taking away the feal determines the office. Sid.

338.

The Chancellor hath two powers, one ordinary, the other extraordinary. In his ordinary power he holds plea of matters, according to the course of the common law; And in the extraordinary power he judgeth according to equity, moderating the rigour of the common law; and governing his judgment by the law of nature and conscience; ordering all things juxta aquum & bonum: And having the King's power in these matters, he hath been called the Keeper of the King's Conscience.

With regard to the commencement of his equitable authority, it feems to be untraceable, and to have prescription for its parent. Co. 12. Rep. 113. 2 Inft. 552, 553, 554, 4 Inft. 78, 79. Lev. 242. Hifi. Chan. - fed wide Lamb. Archaion. 62, 63. Dugd. 36.

He who bears this high office is stiled Lord High Chancellor of Great Britain, which is the highest honour of the long robe; and he is not made by letters patent, but per traditionem magni sigilli sibi per dominum regem.

When the Chancellor hath received the feal from the King, there is an entry made upon the close roll in the court of Chancery, what day, and in whose presence, the great feal was delivered, which is all that is requisite. Camd. His. Chanc. 180.

A Chancellor may be made so at will, by potent, but it is faid not for life; for being an ancient office, it ought to be granted as has been accustomed. 4 Inst. 87. But Sir Edward Hyde, afterwards Earl of Clarendon, had a patent to be Lord Chancellor for life; though he was dismissed from

that office, and the patent declared void. Sid. 338.

This high officer, viz. the Chancellor, is to fee that aff things concerning the court of Chancery be directed and disposed according to his advice; and he may hold plea as well extra terminum, as infra, in matters concerning either the ordinary or extraordinary jurisdiction. And this court being always open, a man may have process issued at any time, Broke 116. Crompt. Jour. 42. Stat. 4 Ed. 4. cap. 21.

And it belongeth to the Chancellor, rations officii, to pronounce the cause of summons at the beginning of a Parlisment; and he is to be present at all the King's Councils, and is prolocutor in the House of Lords by prescription, &c.

Elef.

Eles. To him belongeth the constitution and appointment of Justices of the Peace, and Quorum, by commission, throughout all England. Lamb. just. lib. 1. cap. 5. And he is a Conservator and Justice of the Peace throughout all England,

by prescription. Elef.

He is to visit all hospitals and free chapels of the King's foundation. Co. Lit. 96, 344. And if the Ordinary offers to visit them, a prohibition lies. F. N. B. 42. a. He receives and keeps all Bishopricks and Baronies void, and fallen in the King's hands: and it is his privilege to present to all the King's benefices of or under twenty pounds in the King's books, where the King is patron in right of his crown; but not if the King hath them by a collateral title, as by lapse; for ehen the King himself shall present. See 22 Ed. 4. cap. 18. Wood's Inst. 460.; And yet these presentments must pass under the great seal. Plowd: 528. 38 Ed. 3. F. N. B. 35 K. But it appears by 22 Ed. 4. 18. that it belongs to the Chancellor, virtule officis, to present to all the King's Churches under the yearly value of forty marks: And no doubt the Chancellor's authority, in this behalf is enlarged by the grants and letters patent of several of our Kings.

And the Chancellor may not only dispose and order the King's Chaplains as he pleaseth, but as Lord Chancellor may keep and retain three Chaplains attendant on his person, who may purchase licences or dispensations to have and keep two benefices, with cure of souls. 21 H. 8. c. 131

By the flatute of 27 H. 8. cap. 11. the Lord Chancellor may pass things through the seals without paying any Fees.—And to the Chancellor's office in process of time, great au-

thority hath been added by divers statutes.

After a statute of 5 Eliz. during a vacancy upon the death of Sir Christopher Hatton, the great seal was delivered to Lord Burleigh, Lord Treasurer Hunsdon, and two other Lords; and a commission to hear causes was given to sour Judges, Clinch, Gaudy, Windham, and Periam. Hist. Chan. 70. And by 1 W. & M. Sest. 1. cap. 21. Commissioners to be appointed to execute the office of Lord Chancellor or Lord Keeper, may use and exercise like jurisdiction, &c. which the Lord Chancellor or Lord Keeper of right ought to use, as belonging to their offices, or otherwise: And one commissioner may hear motions, and give orders touching interlocutory proceedings, &c. Since this statute, this high office hath been several times in commission; though generally only on the dismission of a Chancellor, still another was appointed.

The Lord Chancellor (or Lord Keeper) in case of fickness, or extraordinary business, may call-some of the Judges to affist him. 4 Inst. 84, 88, 213. And such Judge, so called and deputed, may, in the absence of the Chancellor, pronounce interlocutory orders and decrees.

Master of the Rolls.

HE Master of the Rolls, anciently called Guardein des Rolles, † Clericus Rotulorum, or Clerk of the Rolls, cue cap. 24. and now stiled in his patent, Clericus parvæ Bagæ & Custos &c. Stat. 12. Rotulorum, &c. is chief of the twelve Masters in Chancery, R. 2. cap. 2. and a very ancient officer. His office is grantable by letters patent, either for life or at will, at the pleasure of the King. 4 Inst. 95. But at this time it is always for life.

Both the Chancellor and the Master of the Rolls have been heretofore spiritual persons. And by a patent of Edward III. the Master of the Rolls was appointed and installed in the House of the Rolls in Chancery Lane, by the Lord Chancellor, which manner of induction and instalment continued as long as the Masters of the Rolls were of the clergy; which may be proved by the precedents of those involuments, and the writs themselves extant of record. Eles 36, 37.

The Master of the Rolls is by virtue of his office the chief of the Masters in Chancery, as well as chief clerk of the Petty Bag Office, and is a judicial officer of the court of Chancery; for, besides what he doth as affistant to or affociate with the Lord Chancellor when present, or as deputy to him when absent, many causes are set down before him to hear and decree, which he usually doth on certain days appointed, commonly in the presence of one or more Masters in Chancery, and sometimes in their absence, and either in court, at his own house, or the Chapel of the Rolls; and all such orders and decrees as are made by him, are drawn up and entered as made per curiam. Vide Crompt. Jur. 41. b. And he is the keeper of all records, judgments, sentences and decrees given in Chancery. Eles. 36, 37.

in Chancery. Elef. 36, 37.

In the statte 12 R. 2. cap. 2. he is numbered amongst the greatest officers and magistrates of the realm by the name of Clerk of the Rolls, and before the Justices of either Bench, viz. It is enacted that the Chancellor, Treasurer, and Keeper of the Privy Seal, the Steward of the King's House, the King's Chamberlain, the Clerk of the Rolls,

Inflices of both Benches, &c. shall be called to the naming of Justices of Peace, Sheriffs, &c. and be fworn to do the fame faithfully, and without affection. And by virtue of his office he is a general Conservator of the Peace throughout the kingdom; but it is faid he taketh recognizances, and issues out process of the peace, &c not as incident to his office, but by prescription. But quere, if this be not incident to his office as Justice of Peace. Vide Lamb. Juft. lib. 1. fol. 12.

It appears by the flatute 14 Hen. 8, cap. 8, that the Mafter of the Rolls hath the giving of the offices of the Six Clerks in Chancery. And he hath likewife the appointment of the Clerks of the Petty-Bog Office; the two chief Examiners, the Ufber of the Court of Chancery, &c. And he hath divers prerogatives by statutes, commission, and prescription. Elef.

36, 37; vide Grompt. Jur. 41. b.

By the flatute * 3 Geo. 2. c. 30. All orders and decrees Judicial aumade by the Mafter of the Rolls, except orders and decrees themafter of of such nature as according to the course of the Court ought the Rolls only to be made by the Lord Chancellor, Lord Keeper, or confirmed. Lords Commillioners, shall be deemed valid Orders and decrees of the Court of Chancery; subject nevertheless to be difcharged or altered by the Lord Chancellor, &c. fo as no fuch orders or decrees be inrolled, till the same are signed by the Lord Chancellor, &c.

By the flatute 23 Geo. 2. c. 25. S. 6. the yearly fum of Yearly fala-1,2001. is granted to the Master of the Rolls, payable by ty.

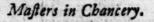
September in every year.

You may move before the Master of the Rolls, to difcharge an order made by the Lord Chancellor, on a motion of course, or an order made ex parte, for only one fide being heard, it is as a continuance of the same motion, .. Mofeley. 72.

equal half yearly payments, viz. on 25th March and 20th

You may prefer the same petition to the Lord Chancellor. that has been dismissed by the Master of the Rolls; for it is in nature of an appeal, and the party has no other remedy. Moseley 77.

This act of parliament was occasioned by a controverly which Lord Chancellor King had with Sir Joseph Joseph, Master of the Rolls, whose power Sir Joseph afferted to be in many respects independent of the Chancellor; whereas the Chancellor contended that he was only the first Maffer in Chancary; and in order to refuse the Chancellor's opinion Sir Jeseph published "A discourse on the judicial authority belonging to the affice of Master of the Rolls in the high Court of Chancery." William Spicer Esq; Master in Chancery was the supposed author of "The legal Judicature in Chancery stated, with the Remarks on the above Discourse," to this Sir Jeseph seplied, and in the public opinion the controversy ended in Sir Jeseph's lavor. Mafters



HESE officers are twelve in number, whereof the Master of the Rolls is one, viz. the chief. 2 Inft. 407.

They are affistants or associates to the Chancellor, and Master of the Rolls, and fit with them in court by turns, usually two at a time: And references touching accounts, matters of practice, &c. are made to them, upon which they make their reports. And they also administer oaths, take affidavits, and

acknowledgments of deeds, recognizances, &c.

They were formerly stiled Clerici de prima forma, and were to be grave and ancient clerks; skilful and of long experience in the practice of the court: And by special appointment of Parliament these twelve Clerks, or Masters, were made coadjutors with the Chancellor, and had equal authority with him in forming the Brevia Magistralia; for unless they all agreed, they were to go to Parliament: But in all other cases, by the constitution of the court of Chancery, they are affiftants or affociates to the Chancellor and Mafter of the Rolls. And they were anciently members of the King's court, and allowed robes out of the King's wardrobe, and dieted as a part of the houshold, for whom special purveyance was made; and as in respect of their being counsellors, and affiftants or affociates to the Chancellor and Mafter of the Rolls, they have the honour to fit upon the bench with them in open court; fo in respect of their having been members of the King's court, they attend the House of Lords, and have a right to affift at the coronation of our Kings, Ror. Parl. 10 E. 3. Hift. Chan. 30, 32, 43. Vide Fleta, lib. 2. c. 13.

The latter name of Masters of the Chantery they retain at this day; as also their ancient precedency before all other clerks. And now a recognizance acknowledged before any of them, and certified under his hand, is of that authority, that it is a matter of record, and as effectual as if it had been acknowledged in open court. And all deeds or indentures, which are to be inrolled in Chancery, must be acknowledged before them, And every defendant in a bill exhibited against him in this court, must swear his answer before one of them, except the defendant live in the country; when his answer is

THE RESIDENCE THE

taken by commissioners.

Carry.

By

By the Stat. 13 Car. 2 a public office is to be kept near the Rolls, for the Masters in Chancery, in which they, or some or one of them, shall constantly attend for the administring of oaths, taking captions of deeds, and recognizances, and dispatch of all matters incident to their office (references upon accounts and insufficient answers only excepted) from feven o'clock in the morning 'till twelve at noor, and from two in the afternoon until fix at night: And by this act there are fees appointed; and tables of the fees are to be put up in their office, &c.

By the Stat. 5 Geo. 3. c. 28. 200 l. per annum shall be paid out of the general cash in the Bank of England, belonging to the faitors of the Court of Chancery, the same to be paid thereout half yearly, by an order of the Court of Chancery, to each of the eleven Masters of the Court, to commence from

5th June 1765.

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The rest of their business will appear hereafter under

References, Reports, &c.

As to Masters extraordinary for the taking of assidavits, &c. Masters exin the country; you must get a certificate signed by three traordinary Justices of the peace, or Counsellors, whereof a Mayor may inChancery. be one, or a Doctor of Divinity; which certificate may be to the effect following, viz.

To the Right Honourable the Lord High Chancellor of Great Britain.

We aubose names are bereunto subscribed, viz. A. B. of the parish of C. in the county of D. and E. F. of the parish of G. in the county of H. and A. H. of the parish of L. in the county of M. being three of his Majesty's Justices of the Peace for the said county, do humbly certify your Lordship, That J. K. of the parish of L. in the county aforesaid, is a person well qualified to be a Master in Chancery for taking of assidavits in the said county; and that there is occasion for a Master extraordinary in the faid place where be dwells, there being never a Master extraordinary near that place; and that the faid J. K. is a person well affected to his present Majesty and Government. Witness our bands this - day of - in the year of our Lord one thousand seven bundred and fixty, and in the first year of the reign of his majesty king George the third.

> A. B. E. F. A. H. This

This certificate you carry to one of my Lord Chancellor's Secretaries, who procures a fint to be figned under the certificate, by his Lordship; which you carry to the clerk of the crown, and he makes you out a commission appointing fuch person to be a Master in Chancery extraordinary. The whole fees thereof come to about feven pounds. And when the Moster in Chancery extraordinary has got the commission, he is obliged, within a month after the date thereof, to take the oaths of allegiance and fu-

premacy...

If the person to be appointed a Master extraordinary is to be fworn in as such in the country, the clerk of the crown makes out a commission to commissioners, with the oaths of allegiance and supremacy, to be administred to the party, which being administered, the commissioners return the commission with an attellation of the execution on the back thereof, figned by them, to the clerk of the crown; who thereupon makes out a certificate on double fixpenny flamp paper, and figns the same: And the expence, where it is by commission in the country, amounts to hear 9 l.

Six Clerks in Chancery.

HESE officers are of ancient continuance; and they were heretofore spiritual persons, as may appear by the Stat. 14 & 15 H. 8. c. 8 .- Since the reign of R. 2. the reputation of their office hath fo much increased, that they have been specially assigned amongst other officers to attend at the King's coronation, as appears by the records of the Herald's office.

They are principally concerned in Matters of equity; and transact and file all proceedings by bill and answer; and also iffue some patents that pass the great seal, as pardons of men for chance-medley, patents for Ambassadors, Sheriffs patents, and some others : And all these matters are transacted by their under-clerks, or others by them appointed. They likewise fign all office copies in order to beread in court, and also certificates, and attend upon the court in term, by two at a time, at Westminster, and there read the pleadings.

The bufiness of the office is done by their under clerks, each of which has a feat in the office, and whereof every

Six

Six clerk has a certain number, usually about + ten, be- + Formerly fides two waiting clerks in each division; all which are there were accountable to their respective Six Clerks for the business but they are סל שלה לא וכנס בי לפון

Ar this day they employ deputies in their absence (usually to the ancia fworn clerk, or a waiting clerk of their own division) ent number to file the proceedings, and to fign office copies and ter-

tificates.

Formerly there was an order for dividing the bufiness Ord. Chanc, among the Six Clerks, which being found to be inconvenient to the suitors, was vacated and discharged: And all clients are now at liberty to chuse their own attornies and

clerks. Ord. Canc. 157.

Note: Befides the fees in the Six Clerks Office there are also several others which are claimed and taken by the Six Clerks as comptrollers of the Hanaper, and for inrolling the warrants for patents, grants, and other matters passing under the great feal, and returned into the Hanaper Office. Moreover the Six Clerks, and the three clerks of the Petty-Bag are by letters patent, granted by Queen Eliz. in the 16th year of her reign, incorporated by the name and file of the Clerks of the Invollment of the High Court of Chancery, and have under them two deputies who officiate.

now reduced

Of Sworn Clerks and Waiting Clerks.

IN order to be qualified for clerks in court, one must be For this articled to a " fworn clerk, and ferve him I five years oath fee the in the Six Clerks Office, and at the expiration of their flat. 18 E. clerkships, they are to be examined by the Master of the ken not by Rolls, and if approved of, they are thereupon admitted, thefixclerks and fworn in before his Honour, to the good and faithful only, but hy execution of their office, and thereby become fworn clerks all other officers in the of this court, and act as fuch, and are allowed to have Chancery freeholds [i. e. feats] in the Six Clerks Office, and to of the like vote for Parliament men in Middlesex. And all suitors of quality, and this court must employ one of the fworn Clerks, or one of their ferthe twelve waiting Clerks practifing in the faid office, to 1 A waiting act as clerk in court.

may be purchased at the end of three years, and after two more a sworn clerk's seat. But a waiting clerk cannot take an articled clerk.

They make out all writs both special and common, and all process (except subpanas) in all causes, depending on the the equity fide of this court, wherein they are respectively employed. They claim a right to, and, as occasion requires, have the cullody of all records relating to causes there, of which records they make copies for their clients. They also engross bills, answers, &c. (if not done by their clients or follicitors) and attend the court and Mafters in Chancery as occasion requires, and draw and inroll the decrees of the faid court, and also make copies of all depofitions taken by commission in the country, &c. And they give their attendance not only in Term-time, but also in the Vacation, by themselves or agents.

All office-copies of proceedings made by them are to contain fifteen lines in every sheet, and fix words in every line, writ orderly; and are to be figned with the name of the Six Clerk to whom they belong, by himself or deputy, or otherwise they shall not be made use of in court. Ord.

Cane. 83.

No under clerk is to be deprived or suspended but by order of the Lord Chancellor, &c. Ord. Canc. 161. By this But for order likewise the fees or copies of bills, answers, pleas, &c. and for writs, commissions, and exemplifications, are der in Chan, limited; as to be divided between the fix clerks and under ' made28 No. clerks; and the under clerks are to pay, and be accountable to the fix clerks for their fees, or give notes of the name and place of abode of clients in arrear, in their difcharge.

None ought to fit or write in the Six Clerks office but the Six clerks, Sworn under clerks, and waiting clerks, and their clerks or agents; and no Master of the court is to deliver any answer, plea, &c. to any person but such clerks; and no Six clerk shall deliver any bill, answer, &c. to any person but a sworn under clerk, or waiting clerk, or their respective agents; also no sworn clerk is to deliver any bill or answer, &c. other than to his respective clerk or agent, for whom he shall answer. Ord. Cane. 222, 223, &c.

See bill for building in Clerks office. Bateman.

Of the | Register.

|| On an appeal to the Lords the party is never put to ly 35.

vide the or-

Vol.

HE Register is a place of great importance in this court. He holds by letters patent, and hath several prove the deputy registers under him, who sit in court by turns, and Register's take notes of all orders and decrees made in court; and hind toadeeree. Mole- accordingly draw up the orders, which are to be entered in this. this office; but before they be enter'd they are to be paffed, [i. e to have the hand or mark of a deputy register to them.]

Rules and attachments are also to be entered in his office, by one of the entring clerks. See more here-

after.

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In his office are filed all reports from the M sters upon references, and all exceptions taken to any of the said

reports.

The Registers are not to enter any plea or demurrer in the paper, unless the order for it be brought to be drawn up at least four days after such order is pronounced for arguing such plea, or demurrer, &c. and afterwards no alteration shall be made.

Minutes of decrees, &c. taken by the registers, are to be read in open court, that if there be any mistakes, the counsel may speak for rectifying them while fresh in memory.

Ord. Canc. 213.

By Stat. 12 Geo. 1. cap. 32. two orders of the court of Chancery, in the act fet forth, are confirmed, and thereby (inter alia) it is directed, that all fecurities belonging to the fuitors of the court to be delivered out of the bank, are to be certified by the Register to the Master, what security is to be delivered out, together with the numbers, dates, and sums of such securities, and the name of the cause wherein the same is to be delivered out.

When stock is likewise to be transferred to suitors, the

Register is in like manner to certify.

And when it is to be paid out of the bank to suitors, &c. the chequer note on the bank for payment must be counterfigned by the Register.

The Register's office is in Symond's Inn in Chancery-

Master of the Subpoena Office.

In this office are made out all writs of Subpæna, both special and common. The office is granted by letters patent: And the business is transacted by deputies.

The office is in the Crown and Rolls Yard, Chancery-

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Regifter

Register of Affidavits.

THIS officer files and registers affidavits, and makes copies of the same, which are signed by himself or his deputy; and he also issues certificates under his or his deputy's hand, when required on any extraordinary occasion.

Affidavits in this court are generally to be filed before exhibited in court, or produced to ground any orders, writs, &c. Likewise copies are to be made by the register; and no counsel, clerk, &c. shall give any affidavit in evidence that is not filed and registred in the affidavit office.

Ord. Canc. 9.

This Office is also granted by letters patent.

The Affidavit office is in Symond's Inn in Chancery-

Of the Examiners.

THESE officers are two in number, and have under them several deputies, and copying clerks: They by themselves, or deputies, examine witnesses produced on either side (being sirst sworn by a Master on interrogatories) take their depositions, and make out copies of them, and of the interrogatories, where not by commission in the country. And, as occasion requires, they give certificates, and attend the court with any deeds or writings left in their custody. And none but such clerks as are sworn, or their agents by them employed, shall make copies of depositions, Se. which are to be kept private in the office 'till publication be passed, Sc.

The Examiners Office is in the Rolls-Yard in Chancery-

Of the Usher of the Court of Chancery.

THE Usher of the Chancery had formerly the receiving and custody of all money ordered to be deposited in court, and paid it back again by order, for which purpose he attended on the court; which business was by order of the court vested in the Masters in Chancery; but was taken from both the one and the other by Stat. 12 Geo. 1. and vested in the Accountant general.

To the Usher it belongs to have the carriage of records; and by order of court, he or his deputy is to deliver done by the parchment of due proportion to the under clerks for inrolling clerk of the of decrees, Gr. Ord. Canc. 23.

Chapel of the Rolls,

Of the Accountant General.

HE is a new officer appointed by Parliament, and stands in the place of the Masters and Uster, and shall do all fuch matters and things relating to the delivery of the fuitors money and effects into the bank, and taking them out by order, and keeping accounts with the bank, as by the orders of the court of Chancery of the 26th of May, and the 4th of November 1725, are to be done by the Masters and Usher. And the Mafters and Uther were to make up their accounts with the Accountant General, and pay into the Bank all money, &c. remaining in their hands, to be placed to the account of the Accountant General; also mortgages, tallies, and securities in the Masters or Usher's name in trust for the fuitors, to be affigned to the Accountant General, &c. And mortgages taken by the direction of the court, for the benefit of the fuitors, thall be taken in the name of the Accountant General wherein the particular trust is to be specified; and the Accountant General shall not meddle with the actual receipt and custody of the fuitors money or effects, but shall only keep the account with the Bank; and the Bank is to be answerable for all money received by them, and not the Accountant General, &c. Vide Stat. 12 Geo. 1. cap. 22.

He holds his office during the pleasure of the court, which is generally for life; and the court of Chancery hath power to make further regulations relating to his office; and forging the name of the Accountant General, Ge. to any certificate, in order to the receiving any of the fuitors money, is by the faid flatute made felony.

The Accountant General's Office is in Symond's Inn in Chancery-Lane. I ate Balbers of a leg sell of binde giel seems and an in order to be greater to you are represented intuitible diffe-

diana Bantzent at who so belowing ban theenth a the clucks been, all een change are transmissed from the record

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Of the Curfitors.

THE SE officers are of a very ancient inftitution; they are in number twenty-four, and were incorporated by Queen Elizabeth. They make out all original writs in Chancery returnable in C. B. &c. and amongst these the business of the several counties is severally distributed. In the Stat. 18 Ed. 3. they are called Clerks of Course.

The Curfitors Office is in Chancery-Lane.

Of the Clerks of the Petty-Bag Office.

The principal clerks of the Petty-Bag are three in number, (of which the Master of the Rolls is chief) and have several clerks under them. They transact great variety of business, which requires knowledge and experience in the practice of the law; and have the making out writs of summons to Parliament; and commissions directed to commissioners of every shire for assessing of subsidies and taxes, as appears by the Stat. 33 H. 8. c, 22. Conge de Essires for Bishops, on their promotion to any see; patents of customers, gaugers, controllers, and alnegers, liberates upon extents of statute-staples, and recovery of recognizances forseited, and all elegits upon them.

All offices that are found post mortem are brought to the Petty-Bag Office, to be filed. Here are entered all pleadings of the Chancery concerning the validity of any patent, or other thing which passeth the great seal; which pleadings are according to the course of the common law. And if any question arise about the acknowledgement of any deed acknowledged in the Chancery before the Lard Chancellor, Lord Keeper, Lords Commissioners, Master of the Rolls, or any Master of the Chancery, it is to be here prosecuted; and all statutes and recognizances taken before any officers of this court to that purpose deputed, are transmitted hither. Also all suits for or against any privileged person in this court, are brought and proceeded on only in this office. And by the clerks here, divers things are transmitted from the riding clerk.

elerk, and the inrollment office in the Chapel of the Rolls,

The Petty-Bag Office is in the Rolls-Tard in Chancery-

Serjeant at Arms.

HIS officer attends the Lord Chancellor, and carries SeePost307.
the Mace before his Lordship; and by him. or his 2 Vol. 519.
substitutes, persons standing in contempt of the court are
seised and brought up as prisoners:

Warden of the Fleet.

THIS officer attends the court in order to receive fuch prisoners, as are committed by the court.

Clerk of the Chapel of the Rolls.

HE attends at the Rolls Chapel, to fearch for Deeds,

And Note; That besides these officers, there is a Clerk of the Crown in Chancery, his office is in Rolls Yard; Clerk and Controller of the Hanaper; Clerk for Inrolling Letters Patent, &c. not employed in proceedings of equity, but concerned in making out commissions, patents, pardons, &c. under the great feal, and collecting the fees thereof: A Clerk of the Faculties for dispensations, licences, &c. Clerk of Vide 25 the Presentations, for benefices of the crown in the Chancellor's H. S. c. 20. gift; Clerk of + Appeals, on appeals from the courts of the + Vide 25 Archbishop to the court of Chancery; and divers other H. 8. c. 19. officers and clerks, who are constituted by the Chancellor's commission or letter, and they are to attend the Lord Chancellor for particular purposes, and on particular occasions; fuch as the Sealer of Writs, &c. Others are granted by patent from the King; as the Clerks for writing Licences of Alienation.

Alienation, Writs of Licences of Protedion, and many others of the like nature. And some are ordained by Parliament to be nominated and constituted by the King's Letters Patent; such as the Writer and Involver of Confirmations of all Licences, and Dispensations, as shall be brought into Chancery under the Archbishop of Canterbury's seal, &c.

For Names of the present Officers, See List of them in 2 Vol.

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Court of Chancery. erec of Ya elected to make it may

CHAP. I.

Of parties to the fuit: And of proceedings in equity in general.

S the business of this court is chiefly taken up in its extraordinary quality; we intend in the following treatife intirely to confine ourselves to that branch; and therefore, in this court, fuits are generally commenced, profecuted and defended by parties in their own names only. except in cases of infants, lunaticks, ideots, and feme coverts; and they are profecuted by fuch in the name of some person as their prochein amy, or next friend, and by their committees in case of lunaticks and ideots; bur if fuits are brought against any of these persons, they must have guardians appointed or affigned them by the court, by whom they must answer and defend such suits. erea. Humpher v. Elementer, g P. W. H.

Suits may also be brought here either in the party's own right, or in right of another, or in both the rights: Of the first sort are most suits in this court; of the second fort are suits by executors, administrators, trustees, &c. and of the last sort are suits of baren and seme, for lands, &c. of the wife's right. And whoever sues in his own right must take care that he hath no legal disability; as outlawry, excommunication, &c. for such disability may be pleaded in bar.

Regularly all that are interested are to be made parties, otherwise the defendant may demur; or if he doth not, the court will not proceed to a decree; or if a decree be made, it may be reversed; but if it be not reversed, yet none but such as were parties and those claiming under them can be

bound by it.

A. covenants for himself and his heirs, that a jointure house shall remain to the uses in the settlement. The jointress brings a bill against the heir for a performance, tho at law the creditor may sue the heir only where the heir is expressly bound; yet as the personal estate is the natural fund to pay all debts, and as the executor may make it appear that he has performed the covenant, the executor must be made a party in equity. 3 P. Will, Rep. 331, 332, 333.

But if a bill is brought by a mortgagee against the heir of a mortgagor, to foreclose, the executor of the mortgagor need not be made a party.

Ibid.

Bill for an account of the personal estate of A. tho' the person who has the right to administer to A. be a party, yet this is not sufficient without administration actually taken out; for if any account should be taken it may be all overhaled again when administration shall be taken out.

Hil. 1734. Humpbreys v. Humpbreys, 3 P. Will.

Rep.

Rep. 349. But fee Preced. in Chanc. 63. Mich. 1696. Cleland v. Cleland, where an objection of this kind is over-ruled; and the making a wife a party, who had poffeffed herfelf of her hufband's personal estate, and disposed of it, and who appeared to be the perfon by law intitled to administration, tho' she denied by her answer that she had taken administration, was held sufficient.

They only are defendants to a bill against whom process is prayed. Per Parker C. Fawkes against Prat, Mich. 1719. 1 Will. P. Rep. 593.

The grantee of a rent-charge must make all the purchasers parties. And if two or more have a joint interest, regularly they must be all parties; fo if two or more are liable to a demand, you cannot proceed against one alone. So all executors, trustees, or their representatives, are to be made parties; but this rule may be dispensed with, if any of them are not amenable, or if they have stood out process to a sequestration.

Where there is a general account prayed to bear a proportion of loss, and the parties and not parties are equally affected, the bill shall not abate for want of parties; for it will appear before the Master as if all were there. Ms Ca. in Cha. Pas.

5 Anne.

Or where there are two executors, and one of them lives beyond sea, the executor abroad need not be made a party, if the executor here has afsets in his hands. Ibid. Jeffery v. Napper, Pas. 7 Anna.

In case of a charity, it is unnecessary to make all the tertenants parties. 1 Salk. 63. 1 P. Will.

Rep. 99.

All parties to a yestry order must be made defendants. Mich. 15. Car. Hinchman and Ayer, Hard. 333.

VOL. I

A. re-

A. residuary legatee, brought his bill against B. who was one of the executors (without bis co-executor) to have an account of B.'s own receipts and payments, the co-executor need not be made a

party. 2 Eq. Caf. Abr. 165. pl. 3.

A. proposed to raise a bank, and to procure an act of Parliament to establish and settle it; about sifty joined with him, were at equal expences. This project being likely to take effect, two hundred and fifty more subscribed to raise a fund; but in effecting the project about 6000 l. were lost, and so it dropped. Then the persons who were this 6000 l. out of pocket exhibited their bill against sixteen of the two hundred and sifty subscribers to bear their proportion of the loss. Moved, that the bill should abate for want of parties, but overruled. Easter 8 Ann. 2 Eq. Cas. Abr. 166. pl. 7.

A trustee for three cannot be called to an account by one of them, without making the other trustees parties. Mich. 1682. Honne and Stevens,

1 Vern. 110.

But one legatee may sue without the others. Mich. 34 Car. 2. Haycock and Haycock, 2 Chan. Ca. 124. Tho' one legatee may sue, yet if the residue of the personal estate be devised to three, Quere, Whether one alone may sue for his part? and Vide Nel. Chan. Rep. 243. where it is held he cannot.

Executors must be made parties, trustees, co-

obligors, &c. Vide Nel. Rep. 334.

All executors must sue and be sued. 3 Chan. Rep. 92. 1 Chan. Ca. 277. But if the plaintiff sues one executor, and alledges in his bill that he knows not the other, and prays a discovery who he is, and where he lives; this will be no cause of demurrer. Ruled Mich. 1682. Bowyer and Covert. 1 Vern. 95.

In a bill to be relieved touching a leafe for years, or rather personal duty against executors; tho' the executors be but executors in trust, yet it is not necessary to make the cestui que trusts, or residuary legatees, parties. In an Anonymous Case, Mich.

1684. 1 Vern. 261.

If an executor of an obligor be fued here to discover affets, you must make all the (a) obligors [a) Quare is parties, that the charge may lie equal. 2 Vent. ther you may 348. Vide Nel. Chan. Rep. 105. where it is held not sue the not to be necessary to sue all the obligors; and that and leave out any one who is compelled to pay the money, may them that only as furoblige the others to contribute.

is clear that if a judgment be had at law against one obligor, you may fue the executor of him alone to discover affets, &c. because the bond is drowned in the judgment. Vide 2 Vent. 348. 2 Chan. Ca. 29.

A. begins his will thus: As to all my worldly. estate, my debts being paid, I give, &c. then devises part of his fee-simple estate in fee to his brother B. and other parts of his estate to C. and D. B. entered and devised his real and personal estate to his wife and fon, who fold their lands for a valuable consideration; the simple contract creditors brought their bill against the several devisees of the premises, and the purchasers, to have the lands fold for satisfaction, &c. but the nephew and heir of the first testator was not made a party to the bill; and held by the Master of the Rolls, that as the estate had been for some length of time quietly enjoyed under the will, it was not necessary; but generally, where lands are devised to pay debts, if creditors bring a bill to compel a fale, the heir is to be made a party; otherwise in case of a trust created by deed to pay debts. 3 P. Will. Rep. 91, 92. Harris v. Ingledewe.

Where there is only an equitable charge on a copyhold, and the legal estate descends to the heir,

it is necessary to make the heir a party, otherwise the legal estate of the copyhold could not be conveved to a purchaser; but if the heir at law had, after the testator's death, conveyed away all the copyhold estate, then such grantee being capable of conveying to the purchaser, it might not be necesfary to make the heir a party. 3 P. Will. Rep. 97.

The fecretary and book-keeper of the East-India company were made defendants to a bill for the discovery of some entries and orders of the company. Demurrer, because they might be examined as witnesses, and that their answers could not be read against the company. Demurrer over-ruled, lest there should be a failure of justice, because the company is not-liable to a profecution for perjury, be their answer never so false. 3 P. Will. Rep. 310. Wych and Meal.

It is a general rule, that no one need be made a party, against whom, if brought to a hearing, the plaintiff can have no decree. Thus a refiduary legatee need not be made a party; and for the fame reason, in a bill brought by creditors of a bankrupt against the assignees under the commission, the bankrupt himself need not be made a party. By the Master of the Rolls. Degolls v. Ward, Hil. 1702. tho' formerly it was held that the bankrupt must be made a party. 3 P. Will. Rep. 311.

But none need be parties to a bill, except those that may be bound by the decree. And great caution ought to be used in making defendants to a bill; for if it be matter if evidence, whereby to make a discovery, you will be obliged to pay them their cost; and another thing, you deprive yourself of their evidence; for it is the constant rule of this court, that the answer of one defendant cannot be read against another; and especially when it doth not appear, that they have any thing in their custody, custody, nor pray any thing against them, for then they may very well demur to the bill. 3 P. Will. Rep. 311.

A remainder man need not be a party to a bill (one end of which was to impeach a fettlement) because a remainder man is not regarded in equity, neither can he be bound. 2 Eq. Cas. Abr. 166.

pl. 8.

A. having outlawed B. for a debt due on a bond, brought his bill against B. and C. a trustee for B. with respect to an annuity of 201. per annum, devised to B. in order to subject this annuity to A.'s debt. By the outlawry, all B.'s interest, as well equitable as legal, was forfeited to the crown, and A. must set a grant thereof from the crown, and make the attorney general a party. 1 P. Will. Rep. 445.

In a suit on behalf of a charity, for arrears of a rent-charge, it is not necessary to make all the tertenants of the land, out of which the rent issues,

parties. 1 P. Will. Rep. 599.

Where a bill is brought for surrender of a copyhold estate held for lives, the lord must be made a party; cont. in case of copyholds of inheritance. See 2 Eq. Cas. Abr. 167. pl. 15.

A. cannot fue as creditor one co-executor with-

out the other. 9 Mod. 89.

Nor as reliduary legatee. ibid.

A. leaves a personal estate to her executor in trust for her bastard, who dies intestate without wife or issue. The executor brings a bill against B. (who has the bastard's portion in her hands) for an account. The attorney general and the bankrupt's administrator must be made parties. 2 Eq. Cas. Abr. 168. pl. 21.

To a bill for relief, all parties necessary to the relief must be made parties. Ibid. 170. pl. 28.

If cause be adjourned over, for want of parties, and though defendant be not ferved with any order, vet he must be served with subpana to hear judgment. Mof. Rep. 226.

Thus much may serve for the present, with regard to the parties. For more on this subject, see

2 Eq. Caf. Abr. 630.

If one of the defendants is profecuted to fequestration, the cause may be carried on without him. Mich. 1699. Parker and Blackburn - Yet, I think, in such case, if the sequestration be for want, of an answer, you must obtain an order that the plaintiff's clerk in court may attend with the record of the bill at the hearing; and the court will then. decree the bill to be taken pro confesso against that defendant sequestred, and at the same time make fuch decree against the other defendants who have answered, and are brought to hearing, as the court shall think fit.

Where a defendant cannot be found to be ferved with process, and it is believed he absconds to avoid being ferved with process of subpana, upon an affidavit (a) thereof, the court makes an order appointing him a day to appear to the plaintiff's bill, which order is to be inserted in the Gazette, as directed by the faid act; and that order being read in the parith (b) church of the last place of the detells us, that fendant's abode, and stuck up at the Royal Exchange, of the Court the court, upon the defendant's refusal to appear to was that it the plaintiff's bill, will make an order for the bill

rester much be analy parties. Ind. 170. pl. all.

to be taken pro confesso (c).

to make Affidavit, that the Party making it was informed, and believes that the defendants withdrew the mickes into Ireland in order to avoid being served with the process of this Court, but it must likewise be sworn by whom the Deponent received such information. 17 Vin. Abr. 543, 544 in notes.—(b) Minister preventing order being published in church, indictable for contempt, so said by Lord Chancellor Hardwicke. 2 Tr. Atk. Rep. 114. pl. 105 .- (c) Stat. 5 Geo. II. chap. 25. How proceedings were before this Act of Parhament, see 2 Tr. Ath. Rep. 23. See 208 27, 48, 326.

(a) Mr. Serjeant Barnardifton in his reports of cases in Chancery. 401 to 404. the Opinion is not fuffi-

cient upon this Statute

Proceedings in Equity in general.

A bill may be brought against one factor without

his co-factor, being beyond fea.

Before answer the plaintiff may, by motion of court, obtain an order to amend his bill, and add parties: and also any time before publication, the court will suffer the plaintiff to add parties; and without costs, if there be no plea or demurrer; and if the addition or amendment be fo small as not to require a new copy of the bill, nor any further answer from the defendants who have already answered, the plaintiff amending the defendants copies. And even after publication, and at any time before hearing, the plaintiff may obtain an order to add parties to his bill: But in this case the cause, as to such new defendants, must be heard upon bill and answer.

Where three or four orders are obtained for the amendment of a bill, and new ingroffments made under those orders, the rule of court is, that if the plaintiff moves for further liberty to amend his bill. he shall pay full costs to be taxed. Brindsdel and Sir John Thompson, Barnard. Chan. Rep. 332.

No bill ought to be amended without order of court had for that purpole, upon petition, or motion. -- No proceedings ought to be had upon an amended bill 'till the (b) costs of the former (b) The proceedings are discharged. Gage v. Lister, 1705. - may move to If a defendant answers insufficiently, and you except amend his to fuch answer, and it is referred to the master, who meat of 201. upon arguing the exceptions before him, reports cofts, after the answer insufficient; in this case you may move is put in, if or petition to amend your bill without cofts, fug is is not fet gesting that the answer is reported insufficient, and argued; and praying that he may answer the exceptions and a-after it is mendments at the same time; and in like case if payment of you except, and the defendant submits to answer, the costs of the demurand you find it necessary to amend your bill, here it er. Mos. may be done without cofts. 164.

a demurrer fet down, on 301. pl.

Where

Where a decree is obtained for satisfaction of tradesmen's bills by part owners of a ship, and some of the tradesmen are no parties to the decree; any of the tradesmen, not parties, may, after the decree drawn up, or even signed and enrolled, move the court and obtain an order, that, paying his proportion of the charges of the costs of the suit in obtaining the decree, he may be let in to prove his debt, and have the benefit of such decree. And in all like cases tis the same.

Before answer, a defendant may be struck out upon the plaintiff's motion; and if a defendant answers and disclaims, or appears disinterested, his name may be struck out on motion of the plaintist; but it must be with costs to be taxed after answer. So a defendant may be struck out at any time before hearing; but after appearance and answer, it is with costs; the bill, as to him, being dismissed. A plaintist may likewise be struck out of the bill at any time before hearing, if those that are left be sufficient to answer the costs; but a special order of the court must be obtained for that purpose.

On a plea in abatement, for want of proper parties, it is in the power of the court to dismiss the bill without prejudice, or to give leave to amend on payment of costs of the day. 1 P. Will. 428.

No amendment to a bill in part where it has been dismissed upon the merits. 2 P. Will. Rep. 402.

After a demurrer to the whole bill allowed, the bill is regularly out of court, and no instance of leave to amend it. 2 P. Will. 300.

Come we now to fpeak briefly concerning bills, and

the proceedings thereon in general.

Original bill. And first with respect to a bill in equity: It is in nature of a declaration at law, wherein the plaintiff is to set forth the circumstances of his case, as for some stand, force, or injury done him, praying relief; for that he is without remedy by the common law, and also process of subpana against the defendant, to compel him to answer the charge of the bill: and if it be to quiet the possession of lands, or to stay waste, or proceedings at law, he therein also prays an injunction, &c.

Bill lies to perpetuate the testimony of witnesses to prove a Modus. But Q. if to establish one.

Vern. 130. pl. 114.

d

Bill lies for solicitor's fees only, if for business done in equity; or if for business done in another court, if it relate to a demand made by plaintiff in this. Vern. 203.

Bill of discovery by African company against a merchant, who agreed not to trade in their goods, and a penalty in case he did; it being his own agreement, he shall discover. 2 Vern. 244.

Omission of a clerk, in ingrossing writings, sup-

plied by a decree. Finch 301.

When the Chancery (according to rule) cannot relieve in a just cause, the Parliament will give special directions for relief. 1 Chan. Ca. 205.

Bill of discovery of bankrupt's estate, he must

be a party. 2 Vern. 22.

If a bill be exhibited, where the Lord Chancellor is a party to the fuit, it must be directed to the King's most excellent Majesty; (for no man can be both judge and party in a suit) and the word Majesty must be used in the prayer, and conclusion

thereof, instead of Lordship.

The bill must have all necessary parties, both plaintiss and defendants, and must be under councies's hand; and it ought to be true in substance, and the matter plainly and sufficiently alledged; and ought not to be stuffed with repetition of deeds, Sc. in bec verba, but the effect and substance of so much of them only as is pertinent and material to be set forth; but it must not be impertinent,

nor

See 2 Vol. 130.

(c) The

nor criminal, nor scandalous; for if it is, the defendant may refuse to answer it until such scandal and impertinence be expunged: But the defendant is to move the court, upon which he obtains an order to have the bill (c) referred to a Master, and he court of Exto report whether it be scandalous or impertinent; which if fo reported, the court upon motion will make another order that fuch impertinence or fcandal be expunged by the faid Mafter; and that the plaintiff shall pay the defendant his costs occasioned by fuch impertinence or fcandal, to be taxed by the

chequer was of Opinion, that after an answer is come in, it is too late to refer the Bill for impertinence, but it is never too

late to refer for scandal. Bunb. 304. pl. 387.

faid Master.

Note; The counsel who signed the bill, ought of

right to pay these costs.

N. B. If it be for scandal, in the defendant's anfwer, the Mafter usually taxes very large costs; and if it be very scandalous, the Master may tax the plaintiff 100 l. or more for his costs; therefore great care ought to be taken in drawing the bill or answer, that it be not scandalous. And so also in a bill reported impertinent, very great costs are commonly tax'd.

Where a person may be allowed to set forth in a bill, particular instances of combination, vide

Barnard. 263.

When a particular combination is alledg'd in a bill, a particular answer must be given to it. Ibid.

Bills in equity are usually brought for such matters as are without remedy at common law. And in special cases this court will grant relief against, befides, and beyond the rules of the common law.

After the bill is drawn or perused and figned by counsel, then it must be fairly ingross'd on parchment, with double one-shilling stamps, and being filed with the Six clerk, the plaintiff takes out a

Subtana

subpana to compel the defendant to appear to and answer the same : But if the bill prays an injunction to flay proceedings at common law, or to flay waste, you may take our process of subpana before the bill be filed; but you must take care to have your bill filed by or before the return of the suball coffs with regard to feel examptions .. snaq

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Process of subpana being issued, and the defendant therewith served, he appears, and puts in his answer to the bill (if there be no cause for a plea or demurrer) then the plaintiff replies: But if the answer be insufficient; the plaintiff files or delivers exceptions to the answer as insufficient; which exceptions must be signed by counsel; and the defendant has eight days after exceptions filed, or delivered, to submit whether he will put in a further answer or not; and if he does not submit to put in a further answer, the plaintiff may move to refer it to a Master to look into the bill, answer, and exceptions, and certify whether the answer be sufficient in the points excepted to or not; which if reported insufficient, the plaintiff takes out a subpana against the defendant for 40s. costs, if the answer was fworn in town; but if fworn in the country 503: costs; and takes out another subpana returnable immediately against the defendant, for him to put in a better answer; which subpana may be served on the defendant's clerk in court: But the defendant, if he is advised by counsel that his answer is sufficient to a common intent, may take exceptions to the Master's report, which exceptions must be figned by counsel on a double fix-penny stamp'd sheet, and deliver'd to the senior register of the register's office; and at the same time deposit five pounds with him, and take his certificate thereof; a copy of which must be served on the plaintiff's clerk in court. And after such exceptions filed, either party may petition the Lord Chancellor to appoint a day for

for arguing the exceptions before his Lordship; and if those exceptions are allowed good, the court orders the defendant to take back his 51. deposited with the register; but if those exceptions are overruled, the court orders the plaintiff to receive the 51. from the register, and which 51. deposite is in lieu of all costs with regard to such exceptions taken and the arguing thereof. When a replication is filed by the plaintiff to the defendant's answer, he may take out a subpana to rejoin against a defendant, and serve him therewith; or he may petition or move the court for a subpana to rejoin, returnable immediately, and that service thereof on his clerk in court may be deemed good fervice on the defendant; and if his witnesses live in the country. may in the same petition pray that the defendant's clerk in court may in four days after notice join and firike commissioners names with the plaintiff's clerk in court, or in default thereof, that the plaintiff may have a commission for examination of his witnesses directed to his own commissioners.

Note; A mortgagor may apply to the court, even without putting in any answer, that it may be referred to the Master in pursuance of the late act, 7 Geo. 2. cap. 20. whereupon the court will make the same order as the the cause was at issue and

ripe for hearing.

Witnesses may be examined upon interrogatories, either in court, or by commission in the country, wherein the parties usually join: and when the plaintiss and defendant have examined their witnesses, an eight day rule is given to pass publication, which when expired, publication is to be made of the depositions, and the cause to be set down for hearing on the Six clerk's certificate, after which follows the decree.

But if a rule is given to publish, which is likely to expire before the witnesses are examined, either

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party may apply to the court, or by petition, to

enlarge the time.

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The Court of Exchequer made a general order, that when publication was passed, and the depositions delivered out to be copied, they would in no case enlarge publication, or give liberty of examining any more witnesses. Bunb. 330. Pl. 410.

Earl Chancellor Hardwicke desired it might be observed, that in all cases of a cross bill filed, after original cause was proceeded in, motion to enlarge publication should be special on notice, that court might judge of it on circumstances, and not of course, as it is, where original cause is not proceeded in, for otherwise it would be easy to delay hearing by keeping this up. 2 Vez. Rep. 36. pl. 111.

Note; When the plaintiff finds sufficient matter confessed in the defendant's answer, whereupon to ground a decree, he may proceed to set down the cause for hearing upon bill and answer: but in that case the plaintiff must take the defendant's answer

to be true in all points.

The decree being served upon the desendant, by a writ of execution thereof, under the seal of the court; if he refuses to obey it, all the usual processes of contempt may issue out against him for his imprisonment, 'till he yields obedience to it; or there may be an injunction granted for the possession of land, where the decree is for land, and the party remains obstinate after his imprisonment; and if this is disobeyed, the court may grant a sequestration of the land: but usually a commission or a writ of assistance is directed to the Sheriff to put the plaintiff in possession.

If the defendant doth not appear on being served with process of subpana in order to answer; then, upon affidavit of service of the subpana, an attachment may be issued against him; and if a non est inventus is return'd by the Sheriss, an attachment,

with proclamations, directed to the Sheriff, may be issued; and this being also return'd non est inventus, and if he stands further in contempt, then a commission of rebellion, directed to four or more perfons commissioners, may be issued for apprehending him, and taking him into custody, who may either detain him in custody, or may bring him into court, and the court will make an order to deliver him to the Warden of the Fleet, if taken in London; and if taken in the country, may deliver him to the county goal, in the execution of which commission, the persons to whom 'tis directed may, with the affiftance of a conflable, juftify breaking open doors, if they know the perlons to be within the house. And if the defendant stands further in contempt, then, on a non est inventus returned by the commissioners, you may move the court upon the faid commission of rebellion (which must be produced) for a Serjeant at arms; and if he cannot be taken, on the Serjeant's certifying the fame, you may move upon his certificate for an order for a sequestration, directed to certain commissioners to sequester the defendant's personal estate, and the rents and profits of his real estate, until answer and further order; by virtue of which order a sequestration is issued.

(d) Upon a Note; When a defendant is in (d) contempt for motion for time to an- want of an answer, and an insufficient answer is swer, it was put in, which is no answer at all; the plaintiff is declared by the Court of not to begin his process de novo, but to go on from Exchequer the last process. MSS. Ca. Temp. King C. Lady it should be an establish. Abergavenny against Lady Abergavenny. 2 Kel. 5.

the future, that where time for answering is out, the desendant shall be deemed in contempt, though no attachment is ruled; and in such case he shall not have surther time
to answer without entering his appearance with the Register as upon a contempt. Bunb.
290. Pl. 372. Ibid. 251. Pl. 325.

But if a Peer is a defendant, you must procure the Chancellor's letter missive for his appearance (which (which is obtain'd by petition) and at the same time you deliver him the letter, you must give him an office-copy of the bill, signed by the Six clerk, or his deputy; and in case he don't appear, you may then have a subpana against him; and (if he is still in contempt) you may move for an order to shew cause in eight days after personal service of the order on the defendant, why a sequestration should not go forth; and if he still stands out, a sequestration issues. Vide 2 Vent. 342. Danv. Abr. 776. 4 Bac. Abr. 238. Gilb. Chanc. 65, 66. 3 Seld. 1543.

And if a bill be against a Member of Parliament, you must give him an office-copy thereof, signed as aforesaid, and at the same time serve the

subpana.

Note; By a late order such persons are not obliged to pay for, or take out any other copy of such bill upon his appearing thereto. 28th Nov. 1743.

And where a defendant wilfully refuses to an-of taking swer, and stands out all the processes of contempt, bills provize attachment, proclamations, commission of rebellion, serjeant at arms, and sequestration; the matter of the bill will be taken pro confesso, and decreed accordingly; but the desendant must have first appeared or been in custody.

If the defendant stands out all contempt to a fequestration, the plaintiff may move to have his bill taken pro confesso, tho' the sequestration be not

fealed or executed. 10 Mod. 421.

If the defendant appears to the fubpana, and prays a further day to answer, and has it, and afterwards stands out all the processes of contempt, the bill will be taken pro confesso. Chan. Rep. 65.

But if the defendant hath not appeared, the vide 2 court will not decree the bill to be taken pro con-Freem. Rep. fello, but will order a sequestration against his real 127. and personal estate, until he clears his contempt; for

no

no decree can be had against him 'till he has appeared. 2 Chan. Rep. 283.

See ante 38. post 326.

But where a defendant abscords or goes abroad to avoid being served with a process, upon affidavit the court will take the bill pro confesso, and may order the plaintiff to be paid his demands out of the estate sequestred according to the decree; the plaintiff giving security to abide such order touching the restitution of the estate, as the court shall make upon the defendant's appearance; but in case such plaintiff shall refuse to give security, then to remain under the directions of the court, until the defendant appear to defend such suit. See Stat. 5 Geo. 2. c. 25.

The opinion of Lord Chancellor upon the above statute of the 5 Geo. 2. c. 25. s. 1. was, That it was not sufficient to make an affidavit, that the party making it was informed, and believed that the defendants withdrew themselves into Ireland in order to avoid being served with the process of this court; but it must likewise be sworn, by whom the party deposing received such information. Barnard. Chan.

Rep. 401, 405.

Defendant not entering appearance within usual time, after issuing subpana, and justly suspected of abscending, in order to avoid being served with process, court may fix a day for appearance, to be inserted in Gazette, and published in defendances parish (a) church; who not appearing thereon, bill

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(a) Minister parish (a) church; who not appearing thereon, bill preventing to be taken pro confesso, and defendant's estate to be order being published in (c) sequestred. Stat. 5. Geo. II. c. (d) 25. s. 1.

church, indictable for contempt. 2 Tr. Atk. Rep. in Chan. 134. pl. 105.——(b) For separation
granted for non-appearance, under this Act of Parliament, 2 Tr. Atk. Rep. 23.——
(c) How the proceedings were before this Act. See 2 Tr. Atk. Rep. 511. This Act extends to Bills of Revivor. 3 Tr. Atk Rep. 690, pl. 260.

The defendant being a prisoner in the King's Bench, refused to answer; whereupon it was prayed that

Proceedings of Equity in general.

that the bill might be taken pro confesso, if he did not answer by a certain day; but the court was of opinion, that unless the defendant was in the prison of the court, the bill could not be taken proconfesso; whereupon he was removed by babeas corpus into the Fleet, and having a day given him to inswer, and he still refusing, the bill was taken pro confesso, and he was ordered to be kept close prisoner. Chan. Rep. 50.

Where the defendant is in custody upon process of contempt (after appearance), and being brought into court, and hearing the bill read to him, and he is required to answer, but obstinately refuses so to do; in this case the court will order the bill to be

taken pro confesso. Moseley 384.

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And if the defendant demur, and the demutrer be over-ruled, and the defendant ordered to answer, if he refuses, the bill may be taken pro confesso.

A quaker being in contempt for not answering upon oath; and he being by order brought to the bar, Lord Chancellor admonished him of the peril of persevering, but he still refusing to answer on oath, the bill was taken pro confesso. 2 Chan. Ca. 237.

But it is presumed, if a quaker will now put in his answer upon affirmation, it is sufficient; but if he refuses, then the bill may be taken pro confess,

as in other cases where upon oath.

Note, Taking a bill pro confesso has not been of long standing, it having been formerly the practice to make proof of the bill, if the defendant stood in contempt to the last process; but lately the practice has been, that if the defendant stands out all process of contempt to a sequestration, the cause is set down to be heard, and the record of the bill produced, and taken pra confesso; but if time be given for a desendant to answer, the after the sequestration, and the the answer be reported insufficient, Vol. I.

yet the bill shall not be taken pro confesso. 2 P.Will:

Rep. 556. See Mofelty 386.

Where process of this court will not affect lands in Ireland, to sequester them for a contempt, vide the case of Sir John Fryar v. Vernon, 8 Mod.

Note, Plaintiff brought her bill sgainft Defendant for an account of profits, &c. and after Defendant had fully answered, Plaintiff amended her bill three times, to which Defendant put in three feveral pleas and demurrers, which had been all over-ruled, and the Defendant stood in contempt to a fequestration for not answering the amended bill. Plaintiff now moved for liberty to fet down the cause on she sequestration, in order that the bill might be taken pro confesso, &c. when it was objected that there being an answer to part (viz. the original bill) the bill could not be taken pro confesso, because part was fully answered and denied, &c. And the case of Hawkins v. Crook was cited. But on the part of the Plaintiff it was urged, that if Defendant by answering part, and refusing to answer the most material point of all, should prevent the bill's being taken pro confesso, that would put the Plaintiff in a much worse condition than not answering at all, and would encourage Defendant by this method to elude the justice of the Court, Ge. And as to How kins v. Crook, Defendant there was willing and defirous to put in a full answer, and that was at length the liberty given him by the Court. Lord Chancellor faid that this is an untrodden path, and as there are no precedents to direct, we must go upon the reason of the thing. At law, after the party has appeared and is in Court, if he makes default, &c. judgment is given for the whole demand; and if in trespass, &c. Defendant pleads, &c. only to part, and fays nothing to the residue, Plaintiff may take his judgment immediately for what is not an-. [wered 3

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fwered; and Courts of Equity form their process upon the same plan when the party is in court; Est. And it is a jurisdiction which seems absolutely necessary, and exercised by all Courts, that when they have the parties once before them, they should have it in their power to determine upon the right, Est, and therefore seemed strongly to incline that the bill should be taken pro confesso quoud the particulars not answered. But the Defendant offering to answer by the next term, except as to matter of account, no order was made upon the main questions a Vin. Abr. 446. pl. 3.

A cause comes to be heard on a sequestration, the desendant obtains a week's time to answer, and the cause is adjourned, he puts in an answer, the plaintiff refers it for insufficiency, the Master reports it insufficient, and the plaintiff serves the desendant with a subpana to make a better answer; the cause comes on again, and the Master of the Rolls decree the bill to be taken proconfesso, but this decree was reversed by the Lord Chancellor, because he could not presume the bill to be true for want of an answer, when by the records of the court there appeared to be an answer, (and admitted by the plaintiff by his taking exceptions) and when severalmaterial parts of the bill, were desied by the answer. Mosteley 389.

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A writ of execution of a decree, was by order ferved on the defendant's clerk in court, he being gone to Ireland, and an attachment was taken out for non-performance of the decree. And Mr. Artorney General moved for the defendant, that he might enter his appearance with the register, that the plaintiff might file interrogatories, and that a commission might be granted to Ireland to examine him to the contempt, being the only method could be taken, since he could not, according to the course of the court, be examined in person. And an or-

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der was made accordingly. Moseley 85. pl. 56.

The court suffers persons to be examined on interrogatories, to purge themselves of a contempt, but never to bring themselves into a contempt.

Moseley 250.

You may move to discharge an order, though you are in contempt, for not obeying it. Moseley

259.

By the standing rule of the court, if the contemnor, being examined on interrogatories, denies the contempt, the prosecutor may take out a commission to examine witnesses to prove it; and the contemnor can name only one commissioner, and may cross examine the prosecutor's witnesses, but cannot examine any witnesses for him; but on proper affidavits, the court will give him leave to examine witnesses to some special points, as the Lord Chancellar did in this case, and declared, that he thought it a very hard rule, and that since the prosecutor might examine one in contempt in interrogatories, he ought to be content with his oath. Moseley 312. pl. 173. Anon.

Note, That in several parts of these proceedings, there may be Affidavits, Petitions, Motions, References, Reports, Exceptions, Certificates, Orders, Injunctions, &c. which, as they have no certain place affign'd them, but are oftentimes preparative to the greater proceedings, I shall in the next place discourse of the same, and the practice concerning

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CHAP. II.

Estitation descriptions

Of Interlocutory Matters.

Affidavits.—(2) Petitions.—(3) Motions.—
(4) References.—(5) Reports.—(6) Certificates.—
(7) Orders.—(8) Paying and receiving money into court.—(9) Injunctions.—(10) Certiorari's.—(11) Precedendo's.—(12) Ne exeat regno's.—(13) Homine replegiando's.—(14) Habeas corpus's.—(15) Supplicavit.—Which being separately handled in this place, will render the rest of the work more distinction and easy.——And first, I shall treat of affidavits.

Of Affidavits.

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A Naffidavit, generally speaking, is a deposition in writing, sworn before some person who hath authority to administer such oath.

And affidavits are usually for certifying the service of process, or other matters touching the proceedings in a cause. And generally, where any motion or petition is made that is not of course, an affidavit of the facts alledged is necessary.

The true place of residence, and also the title of every person who makes an affidavit, ought to be inserted therein: And it ought to set forth the matter of fact only which the party intends to prove thereby, and not any of the merits of the cause.

Where a person comes for a discovery of a deed or writing, and prays relief, there it is necessary for him to make affidavit that he has not the deed or writing, nor knows where the same is, but believes it to be in the custody or power of the desendant. Vide 1 Chan. Ca. 221.

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But

But if he only prays a discovery, or to have it produced at a trial, it is not necessary. 1 Vern, 147.

1 Chan Ca. 11.' 1 Vern. 180. S. P. sed vide 1 Vern.

59. where the distinction is taken quite contrary; but it seems to be the mistake of the reporter.

When a bill is exhibited for a general discovery of deeds, 'tis not necessary for the plaintiff to annex the usual affidavit, that he has them not in his cus-

tody. Preced. Chan. 536.

A hill to perpetuate the testimony of witnesses lies before trial, on assidavit that the plaintiss witnesses are infirm, &c. but not without such assidavit. 1 P. Will. 117.

A Peeress was ordered to produce deeds confessed in her answer upon bonour only, and not upon

oath. Preced. Chan. 92.

If the bill prays relief generally, such relief shall be applied to the want of the deed only, and therefore no affidavit necessary. Frin. 1729. between Whitworth and Goulding.—S. P. As to the general relief being applied to a discovery, resolved the same day between King and King. Eq. Cas. Abr. 14. pl. 2 P. Will. 541. pl. 174.

Note. That the affidavit here spoken of, must

be annexed to, and filed with the bill.

An affidavit of several persons, by the manner of wording it, may be made either joint and several, or joint or several: And great care and exactness should be observed in drawing affidavits. They ought to be fairly writ in one hand, without blow or interlineations of any words of substance; otherwise the Master may refuse to accept them; or if he does, the Register of affidavits, or bis deputy, may refuse to file them, and no use shall be made thereof in this court. Vide Ord. Chan. 15, 18, 92.

But where small blots or interlineations happen, the Master and Register usually mark them in the

margin.

Either

Either the plaintiff or defendant may make an affidavit, which must be sworn before a Master of the court, or before a Master extraordinary in the country; but the latter are not to take any affidevits in London, or within twenty miles of it. every Master extraordinary, at the bottom of every affidavit, is to express the name of the town and county where he takes it, or it shall not be held authentic, or filed. Ord. Chan. 148. Nor shall any affidavit be read in evidence at the hearing of a cause, tho' it shall be used upon motions; for an affidavit is not to be taken or admitted tending to the proof or disproof of the title or matter in queftion, or touching the merits of the cause; nor shall any fuch matter be craftily or colourably inferted in any affidavit of the service of process, &c.

Affidavits must be filed in due time after swearing, and before used in court; but affidavits of serving subpana's to hear judgment, are seldom filed till some short time before the hearing; for if the parties attend at the hearing, the affidavit

need not be filed.

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And if any affidavit be made to ground a motion upon, it ought to be filed fo long before the motion, as that the other fide may have time to take a copy, if the party expects his order to be absolute; and all affidavits, before they are read in court, or made use of to ground any orders, writs, processes or proceedings, shall be filed in the Affida-Office, and attested by a true copy thereof, under the hand of the Register, or Master of the Affidavis vit Office, or his deputy; and 'till then the Registers, and their clerks or deputies shall not make, pass, or enter any orders for attachments, commissions, or proceedings grounded on the same : But all affidavits belonging to the Supplicavit Office, and the Petty-Bog Office, and also those touching lunaticks and bankrupts, are not filed in the Affidavis Office, E 4

but in the several offices where such particular matters are transacted. Vide Ord. Canc. 23 Jan. 1929.

and 15 Nov. 1660.

Where any motion or petition is grounded upon an affidavit of having material witnesses to examine in a cause, whereby to gain longer time; the affidavit must contain the names of such witnesses, who the party is advised are very material witnesses to be examined for him in the cause, and without whose testimony he is advised he cannot safely proceed to the hearing of the cause, to the end that the court may judge of them, and prevent all unnecessary delays. Sed Vide I Vern. 334. where 'tis faid not to be sufficient in an affidavit to say such a one is a material witness, and beyond sea, without mentioning the point to which he can materially depose. It is necessary that every affidavit of the fervice of process, or of orders, do truly and fully prove a good service. And if the plaintiff's name, the court, the return of the writ, or any thing material be omitted, no attachment can thereupon be regularly iffued for want of an appearance: For until a due service be shewn, no contempt appears to the court.

Tis sufficient to file an affidavit any time before, or the day an attachment is made out, but not afterwards.

In an affidavit of notice, 'tis not enough to fay, that notice was given, or the copy delivered to the party's clerk in court; but his name must also be mentioned, that it may appear with certainty; and it must say notice in writing, or words to that effect: And if he who serves the notice does not know that the person on whom it is served is the party's clerk in court, he must say, as be is credibly informed, and verily believes; first taking care that he receives information accordingly. But if a notice be left at the clerk in court's seat, with his

his clerk or agent, fuch clerk or agent need not be named.

Where the court directs that affidavits shall be filed on both sides within a certain limited time, and some of the affidavits on one side happen not to be filed on that day, it is the established rule of the court not to enlarge the order farther, that the other side may be required to give an answer to those affidavits, for the neglecting party is concluded. Barnard. Rep. 402.

On contradictory affidavits of same person, court requires personal examination. 2 Vez. Rep. pl. 14.

All affidavits (except those of paupers) must be written on treble six-penny stamps; and so must a pauper's before he be admitted; but after he is admitted all affidavits made on his behalf are without stamps.

And to all affidavits sworn in this court, the deponent must sign his name or mark on the left hand side of the affidavit, and the jurat on the right side.

Affidavits.

Affidavit that the plaintiff bath not the deeds inquired after, to annex to bill of discovery, before it be filed.

Between A. B. plaintiff, C. D. defendant:

A. B. the plaintiff in this cause maketh oath, that he this deponent hath not, nor to the best of his knowledge, remembrance or belief, ever had, all or any of the deeds, evidences and writings relating to the estate in question in this cause, and which are mentioned in this deponent's bill exhibited in this honourable court against the said defendant; nor doth this deponent know where the said

faid deeds, evidences and writings, or any of them now are, unless they be in the custody or power of the faid defendant, and a family and

A. B. Sworn, &c.

Affidavit to be made by the complainant on bringing a bill of interpleader,

> Between A. B. plaintiff, C. D. and E. F. defendants.

A. B. the complainant maketh oath, that this bill is not exhibited by the confent, knowledge or combination of either of the defendants in the bill mentioned, but merely of his own free-will for relief in this honourable court.

A. B.

Sworn, &c.

Affidavit that the plaintiff bad writings, but bath loft them, proper to be annexed to a bill.

> Between A. B. ____ complainant, C.D. EF. G. H. defendants. and 7. K.

HE faid complainant maketh oath, that fome time fince, to wit, on, &c. laft, the writings now fued for in this cause, were in his this deponent's custody and possession; but since the faid time he this deponent hath accidentally loft them: And this deponent farther faith, that he doth not know where the faid writings are; unless they are in the hands or custody of the faid defendants, some or one of them, or elle that the said write ings are now or late were in the custody of the faid tatalant se non jurior erous equals the find letfendant; ner cent the decoment know where the

defendant J. K. as he is credibly informed and verily believes.

A. B.

Sworn, &c.

Affidavit for a ne exeat regno.

Between A. B. complainant, and C. D. defendant.

A. B. the faid complainant maketh oath, that C. D. the defendant oweth and now is justly indebted unto him this deponent in the fum, Gr. and being thus indebted, the faid C. D. hath lately threatened and given out that he will speedily leave this kingdom and go beyond sea, whereby this deponent will either lose his said debt, or the same will be very much endangered, and it will be difficult for this deponent to recover the same.

A. B.

Sworn, &c.

Affidavit of waste being admitted.

Between A. B. plaintiff, and C. D. defendant.

A. B. the complainant maketh oath, that C. D. the defendant in this cause, on, &c. last past, did pull down and destroy part of the house and outhouses at, &c. to which he this deponent hath lawful title, being seised in see of the said estate and premisses in question, as this deponent is advised and believes, and for which he is now prosecuting the desendant; and that the said C. D. did also fell and cut down several timber trees upon the lands belonging to the same, and continues to commit

other waste and spoil in and upon the said estate of this deponent, to his great loss and damage.

Sworn, &c.

Affidavit of seeing creditors subscribe their respective names under a petition to supersede a commission of bankruptcy.

C. D. &c. maketh oath that this deponent did on the day of fee [naming the (a) cre-(a) Who must consist ditors respectively subscribing feverally sign their ditors, who names to a consent in writing at the foot of a pehave proved tition of A.B. of &c. directed and intended to be the commis- preferred to the right honourable the Lord High Chancellor of Great Britain, whereby it is prayed, that the commission of bankruptcy therein mentioned to have been awarded, and then in profecution against the said A. B. might be superfeded: And this deponent further faith, that the feveral names E. F. G. H. &c. subscribed to the said petition, fignifying their consent to the prayer thereof, are of their own proper hand writing respectively. [Vide postea Petitions,] Sworn, &c. C. D.

Affidavit of Poverty.

Between A. B. plaintiff, and C. D. defendant.

A. B. the complainant (or C. D. the defendant)
maketh oath, that he is not worth the sum of
five pounds in all the world, his just debts being
first paid, and his wearing apparel and the matters
in question in this cause only excepted.
A. B. Sworn, &c.

Sworn, &c.
Affidavit

court, stade in this could (time token finis that

Affidavit to a certificate of a person's being of honourable count to sego date fire day of Ale

laft, whereby Mr. 7. 7 on the belief of the land C. D. 7871, ose, toM bert turenaler of the premi

A. B. (fon or daughter) of A. and C. Bawas bapl tized. on menda again the security and security the

The above is a true copy of the register, of (name the parish) witness my hand, this -day of formed by all parties thereto, acco. 767, , the

earned ad als au don E. F. (Clerk of the Parifb.) concerned who are many in number, and live me

In Chancery. Between, &c. or griven 17000

E. of, &c, maketh oath, that the above. Lerche mentioned extract, figned by E. F. of the pa-clerk of the rish of—aforesaid, is a true copy or extract the above of the register of the said parish, so far as concerns ertificate the baptism of A. B. And that he this deponent fix penny did on the—day of—examine the faid co-of paper, and py or extract, with the said parish register, and that then underthe name E. F. fet and subscribed thereto, is of the above affidaproper hand-writing of the faid E. F. who fet and vit, this will fubfcribed his name thereto in this deponent's as. 6 d. for prefence. M has add of gottavilab id D. E. Sworn, &c. not be an

then the certificate will

didids ones the fair ones, which faid Mr. D. Mr. C. and In Chancery, It moon it cheeks the court for wind Al. .. M.

and eletendants in this coule, as this deponent is Between A. B. and J. K. plaintiffs, and C. D. and L. R. defendants.

D. D. clerk to Mr. R. K. folicitor for the defendant C. D. in this cause, maketh oath, that he this deponent did (the time when) personally ferve Mr. F. D. with an order of this honourable

court, made in this cause (time when same was made,) whereby it is ordered, that a report made in this cause by Mr. Leeds, one of the matters of this honourable court, bearing date first day of May last, whereby Mr. J. J. on the behalf of the said C. D. is reported the best purchaser of the premifee therein mentioned, at the fum of zoboll and all the matters and things therein contained, do frand ratified and confirmed by the order, authofity, and decree of this court, to be observed and per formed by all parties thereto, according to the tenor and true meaning thereof, unless the parties concerned who are many in number, and live remore from each other, their respective clerks in court having notice thereof, should, within eight days after fuch notice, shew unto this court good cause to the contrary, by delivering to the faid Mr. F.D. a true copy of the faid order, and at the same spino dime time thewing him the faid order paffed and entered: And this deponent further faith, that he did afterwards on the fame day, perfonally ferve Mr. G. with the faid order, by delivering to the faid Mr. G. a true copy of the faid order, and at the fame time thewing him the faid order: And this deponent further faith, that he did afterwards on the same day, personally serve Mr. H. with the faid order, by delivering to the faid Mr. H. a true copy of the faid order, and at the fame time the wing him the faid order, which faid Mr. D. Mr. G. and Mr. H. are all the clerks in court for the plaintiffs and defendants in this cause, as this deponent is informed and believes : and this deponent further faith, that he did on the same day personally serve Mr. N. who by a former report had been reported the best purchaser of the faid premises, with the faid order by delivering to the faid Mr. N. a true copy thereof, and at the same time shewing him the faid original order passed and entered.

Sworn, &c.

D. D.

in Chancery. .

In Chancery.

Between A. B. plaintiff, and C. D. and W. K. defendants.

C. B. of New In in the county of Middlefor gentleman, makern oath, that he this deponent did, on the 22d day of December laft, deliver a label of a subpana, under seal of this honourable court, to Mr. T. H. clerk, at his house in Threads needle Street in the city of London, who promised this deponent, that he would deliver the fame to his faid mafter, which faid Mr. H. (as this deponent has been credibly informed and verily believes) is the person made use of by the said defendant G.D. in managing his bulinels as his folicitor or attorney at law, and is now actually fuing the plaintiff on a note given by him to the faid defendant C. D. at common law, in the name of the other defendant W. K. against which the faid plaintiff is now feeking relief in this honourable court : And this deponent further faith, that on the same day, he this deponent left the body of the said subpana under the seal as aforesaid, for the faid defendant C. D. at his late dwelling house, and last place of fettled residence, in St. Martin's le Grand, in the said city of London, (as this deponent hath been also credibly informed) by delivering the fame to a woman, who faid she then lived in the faid house, and acquainted her with the contents thereof, which faid subpoena was for the faid C. D. to appear in this honourable court, at the fuit of the faid plaintiff, and was returnable immediately.

Sworn, Ga ben (a de Care C. B.

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In Chancery.

Between R. H. plaintiff, and F. G. defendant.

lancer.

D. clerk to R. K. of Cafile Yard, Holborn, in the county of Middlefex, gentleman, maketh oath, that the defendant J. G. liveth in Great George Street, within the city of Westminster, or the suburbs of the city of London, in the county of Middlesex. And this deponent, this present day, enquired at the said defendant's house or lodgings in the said street, whether he the said defendant was in town or not; and this deponent was there informed by a servant in livery at the said defendant's house or lodgings, that he was then within, in his said house or lodgings.

Sworn, &c. D. D.

N. B. If the defendant does not live in London, or the suburbs thereof, the place where, must be stated in the affidavit, and how many miles it is distant from London,

In Chancery.

Between R. R. plaintiff, and S. T. defendant.

R. of, &c. the complainant in this cause maketh oath, that on (the time when) at (the place where) he heard S.T. the defendant in this cause, own and confess to Mr. T.C. (the person to whom he made such confession) that he rhe said defendant was served with a writ of subpoena, issuing out of, and under the seal of this honourable court,

court, returnable (the return of writ) at the fuit of this deponent. Sworn, &c. R. R.

In Chancery. It and to author per bas

Between R. R. plaintiff, and S. T. defendant.

R. R. of, &c. the complainant in this cause, Affidavit of maketh oath, that on (the time when sub-complainant poena served on defendant) he saw P. R. of, &c. another perferve the defendant S. T. with a writ of fubpana, fon ferve deissuing out of, and under the seal of this honoura- with a subble court, whereby the faid defendant S. T. was form at his required to appear in the faid court, on (the return of the writ of subpoena) at the suit of this deponent, and that fince the service thereof, the said P. R. is dead, or has absconded, so that he cannot now be found or met with.

Sworn, &c.

R. R.

In Chancery.

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Between T. C. plaintiff, and A. B. defendant.

C. B. of, &c. gentleman, maketh oath, that he Affidavitto this deponent, this 17th day of May instant, obtain an orwent to Mr. P. P. who is solicitor for the defend- that service ant in this cause, to inquire where he could find the to hear defendant A. B. in order to serve him with a sub-judgment on poena to hear judgment in this cause, which this folicitor, deponent then had in his pocket ready to ferve, shall be and the faid Mr. P. P. told this deponent that he good services believ ed the said A. B. was in Scotland, but immediate ly afterwards returned for answer that he VOL. I. knew

knew not where he was; and this deponent the same day went to the Crown and Anchor Tavern, in the Strand, (which place this deponent was informed was a house where the said A. B. used frequently to come) and the mafter of the faid tavern told this deponent that he did not know where the faid A. B. was, or was to be mer with; and this deponent faith, that he on the same day went to a public house, called the Flying Horse, in Bartholomew Lane, in the city of London, another place where this deponent was likewise informed the said defendant A. B. used frequently to come, and the master of the house likewise informed this deponent, that he knew not where the faid defendant A. B. was, but believed he was very hard to be met with; and a gentleman being then in the faid Flying Horse, told this deponent, that he knew the defendant A. B. very well, and that he was not then in Great Britain,

Sworn, &c.

C. B.

Affidavit of seeing a person serve a subpæna, when the person who served it is dead or absconds.

Between A. B. plaintiff, E. F. defendant.

A. B. of—in the county of—maketh oath, that he this deponent was present on the—day of—and did see C. D. of, &c. personally serve E. F. the defendant in this cause, with a subpoena issuing out and under the seal of this honourable court, by delivering unto the said E. F. the body of the said subpoena, so under seal as aforesaid; by which said subpoena the said E. F. was commanded to appear in this honourable court

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court the — day of — at the suit of the above named plaintiff: And this deponent further saith, that he this deponent hath diligently and strictly inquired after the said C. D. in order that he might prove the service of the said subpoena, but this deponent hath not been able to get any other intelligence of him, but that he is either dead or absconds, so that he cannot be found.

A. B. ananogel chia deponencia

Sworn, &c.

label of the laid (nopermit.

Affidavit that a defendant absconds to avoid being served with a subpæna.

Between A. B. plaintiff, and C. D. defendant.

A. B. the plaintiff in this cause maketh oath, that on strict search and diligent inquiry at the usual place of residence of the desendant C. D. and elsewhere, he cannot be found to be served with a subpoena issued out of and under seal of this honourable court, returnable, &c. at this deponent's suit: And this deponent further saith, that he was informed by Mr. E. F. of ——, which information this deponent verily believes to be true; and he justly suspects, that he the said desendant C. D. is gone beyond sea, or now absconds on purpose to avoid being served with the aforesaid process; and saith, that the said C. D. hath not entered any appearance in this cause.

A. B.

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Sworn, &c.

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Affidavit

Affidavit of serving a subpoena for a better unswer.

A. B. &c. [as in offidavit of ferving a subpoena to answer] by which said subpoena the said defendant C. D. was commanded to appear in this honourable court to put in a better answer to the plaintiff's bill, as appeared to this deponent by the label of the said subpoena.

A. B.

Sworn, &c.

Affidavit of serving a subpoena for costs, and refusal to pay the same.

Between E. F. complainant, and C. D. defendant.

Note; All fubpue: a's for costs must be served personally. See post, 324.

B. &c. maketh oath, that this deponent did on the -- day of -- personally serve the faid defendant C. D. with a subpoena issuing out of and under the feal of this honourable court, by delivering to the faid C. D. the body of the faid subpoena so under seal as aforesaid, by which said subpoena the said C. D. was required to pay unto the faid plaintiff, or bearer, the fum ofappeared to this deponent by the label of the faid subpoena; and this deponent did at the same time demand of the faid C. D. the faid sum ofbut the said C. D. then resused to pay the same, or any part thereof, to this deponent, nor hath the faid C. D. fince paid the same, or any part thereof, either to this deponent, or to the faid plaintiff, as this deponent is informed, and verily believes.

A. B. Sworn, &c.
Affidavit

inquiry this pleycocon comes bear where he is Affidavit of Service of a subpoena to name an attorney.

THE form of this affidavit is the same as that of serving any other subpoena; only inserting at the last, whereby the faid defendant was required to appear in this court the - day of - to

name an attorney at the plaintiff's fuit.

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Note: It is usual, if upon service of this writ the defendant do not appear at the return thereof, to proceed by attachment against him to compel him. Where the clerk in court for the defendant dies pending the fuit, the plaintiff ferves the defendant with a fubtorna to name an attorney. But if the plaintiff's clerk in court dies before the decree, the defendant need not ferve the plaintiff with a subpoena, because it is the plaintiff that must keep the cause moving; and the defendant can only give him notice to difmis, if he does not proceed in three terms: And he is to ferve this notice personally upon the plaintiff, which will oblige him to have recourse to a clerk in court. But after a decree, if there be an account before a Mafter, &c. and the plaintiff's clerk dies, then the defendant may ferve him with a subpoena to name an attorney.

Affidavit that a plaintiff cannot be found.

Between C. D. plaintiff, and E. F. defendant.

ne see seed and for his B. of, &c. solicitor for the defendant in this cause, maketh oath, that he this deponent hath lately used his utmost endeavours to find out F 3 the A. B. Sworn, &c.

Affidavit that the defendant cannot answer without sight of goods in the country.

Between A. B. plaintiff, and C. D. defendant.

C. D. the defendant in this cause maketh oath, that this deponent cannot put in a full and perfect answer to the complainant's bill, without the sight of several goods and things mentioned in the plaintiff's said bill: And this deponent surther faith, that the said goods and things are now at in the county of above miles distant from the place of this deponent's now residence.

Ç. D.

Sworn, &c.

Note; If the bill be for a discovery of deeds and writings, then the affidavit must be thus, viz. that the defendant cannot put in a full and perfect answer, &c. without the fight and perusal, &c. (mentioning the deeds, &c. and which deeds, &c. are at, &c.

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Affidorit

Affidavit that a defendant is fick and unable to anfwer.

> Between E. F. plaintiff, and C. D. defendant.

A. B. of, &c. maketh oath, that this deponent hath attended C. D. the defendant in this cause for a week past as his physician, and saith, that during the aforesaid time the said C. D. hath been and now is, so ill and disordered in his senses, by means of a violent fever, which he now labours under, that he is confined to his bed: And this deponent verily believes that the faid C. D. is, by reason of such indisposition, at this time utterly incapable of answering the plaintiff's bill.

Affidavit that a defendant is unable to attend to put in his answer.

> Between A. B. plaintiff, and C. D. defendant.

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F. of, &c. maketh oath, that the faid defend-E. F. of, Gr. maketh ball, and is unable pains, that he is confined to his bed, and is unable to attend to put in his answer to the said complainant's bill in this cause.

E F. Sworn, &c. ded see he fame time rive to the faid between

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Affidavit

Affidavit of a witness being old and infirm, upon a petition to examine him de bene effe before iffue joined.

> Between A. B. plaintiff, C. D. defendant.

A. B. the plaintiff in this cause makerh oath, that G. H. of, &c. gentleman, a very material witness on his behalf in this cause, and without whose evidence this deponent (as he is advised, and verily believes) cannot fafely proceed to a hearing in his faid cause, and is now in the seventieth year of his age, as he the faid G. H. informed this deponent; and this deponent further faith, that the faid G. H. appears to be very weak and infirm, and in a declining way, and in all probability not likely to live long. A. B. Sworn, &c.

Affidavit of service of a subpoena to testify.

Between A. B. plaintiff, C. D. defendant.

G H. of, &c. gentleman, maketh oath, that he this deponent did on the - day of - perfonally ferve Mr. 7. K. with a subpana issuing out of and under feal of this honourable court, by delivering unto the faid Mr. J. K. the body of the faid subpana under seal as aforesaid : And this deponent did at the same time give to the said Mr. 7. K. one shilling, by which said subpoena the said Mr. 7. K. was immediately to appear in this court to teftify for the plaintiff in this cause, as appeared to this deponent by the label of the faid subpoena. G. H.

Sworn, &c.

An affidavit of a defendant, his clerk in court, and solicitor, in order to enlarge publication, the commission being returned.

> Between A. B. plaintiff, C. D. defendant.

HE defendant C. D. of-in the county of , and E. F. the defendant's folicitor in this cause, and G. H. the said defendant's clerk in court in this cause, severally make oath, and say; and first, the said defendant C. D. maketh oath, that the depositions taken in this cause, by virtue of a commission issued for that purpose out of and under seal of this honourable court, have not been feen, read, or heard read by this deponent, nor hath this deponent been informed or acquainted with the purport or contents of the faid depolitions fo taken, nor will this deponent, until publication shall be further enlarged, and pass by the order of this honourable court, in case such order can be obtained: and the faid defendant further faith, that he hath, feveral material witnesses to examine, as he is informed, and believes (to wit ---). And the faid E. F. and G. H. for themselves severally make oath. that the faid depolitions are returned, and now remain in the cultody of this deponent G. H. the faid defendant's clerk in court, unopened and unpub? lished as these deponents severally believe: And further fay, that they, nor either of them, have not feen, read, or heard read, the faid depositions, nor been informed of the contents thereof, nor will they these deponents, or either of them, be informed of the contents thereof, until publication shall be further enlarged, and pass by the further order of

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of this honourable court, in case such order can be obtained.

(a) See post, 341. C. D. All (a) funory the day of-E. F. 1767, of the publick office, G. H. before

Affidavit of a clerk in court, in order to enlarge publication, the commission being returned.

Between C. D. complainant,

E. F. desendant.

A. B. one of the sworn clerks of the Six Clerks Office, the said—'s clerks in court, maketh oath, that the depositions taken in this cause, by virtue of a commission issued for that purpose out of and under seal of this honourable court, are returned unto him this deponent, and the same remain unopened and unpublished; and this deponent saith, that he hath not seen nor read, nor is he acquainted with the purport or contents of the depositions so taken, nor will this deponent be informed thereof until publication shall pass by the surface order of this honourable court, in case such order can be obtained.

Note: The plaintiff or defendant, and his folicitor, must make the like affidavit with the clerk in court, where publication is actually passed and witnesses examined, before any order can be obtained to enlarge publication.

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Affidavit of a solicitor, in order to enlarge publication, the commission being returned.

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Between C. D. complainant, E. F. defendant.

A. B. of, &c. maketh oath, that he hath not feen, heard read, or been informed of the purport or contents of any of the depositions taken in this cause, nor will he this deponent see, hear read, or be informed of the purport or contents of the said depositions, until the surther order of this honourable court, in case such order can be obtained for the said desendant to examine any witnesses

Note; This affidavit is used where the clerk in court has made an affidavit as before; but then the plaintiff or defendant, at whose request publication is enlarged, must make the like affidavit; and if all three are in or near London, they usually join in one affidavit.

Note; An affidavit of fervice of a subpoena to hear judgment, may be in the same form as where a subpoena to appear; for which see Fol.

Affidavit of ferving a notice of motion.

Berween A. B. complainant, C. D. defendant.

G. H. of, &c. maketh oath, that he this deponent did on the —— day of ——— ferve Mr. E. who acts as clerk in court for the defendant in this cause (as this deponent is informed and

and believes) with a notice in writing in this cause, purporting that the plaintiff intended to move the court, &c. (bere recite the notice) by delivering a copy of the said notice to the said Mr. E.'s clerk or agent at his seat in the Six Clerks Office.

G. H.

Sworn, &c.

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Affidavit of a mortgagee's attending to receive bis money pursuant to the master's report.

Between A. B. plaintiff, C. D. defendant.

A. B. the plaintiff in this cause maketh oath, and faith, that he this deponent, in pursuance of the report of S. Y. Esq; one of the Masters of this honourable court, bearing date-day of ____ did on the ___ day of __ personally attend and wait at the Chapel of the Rolls in Chancery-Lane from before the hour of ten of the clock until and after the hour of twelve of the clock (the time and place mentioned in the report) in the forenoon of the faid—day of order to receive from the defendant in this cause the sum of 544 l. 7 s. by the said report, reported due and directed to be paid to this deponent for principal, interest, and costs for the mortgage in question in this cause, when and where the said defendant (if more than one " the faid defendants, " any or either of them") or any other person or persons on his, their (any or either of their) account or accounts, did not, to this 'deponent's knowledge or belief, attend or pay to this deponent the faid fum of 5441. 7.s. or any part thereof; but this deponent faith, that the faid fum still remains due and unfatisfied.

A. B.

Sworn, &c

Affidavit of serving a petition.

Between E. F. plaintiff, and of strong C. D. defendant.

A. B. of, &c. — maketh oath, that he this de-ponent did on the — day of — instant (if upon the party bimself, then you say, " personally " ferve the (party) with a true copy, &c."] leave at the feat of Mr. ---- of the Six Clerks Office, with his agent there, a true copy of a petition in this cause in writing, preferred to the right honourable the Master of the rolls, on the humble petition of the faid defendant, with his Honour's anfwer or order thereon, bearing date the ___ instant, whereby it was ordered that the parties concerned should attend his Honour on the matter of the faid petition the then next day of petitions, of which notice was forthwith to be given; which faid Mr. acts as clerk in court for the plaintiff in this cause, as this deponent is credibly informed, and verily believes: And this deponent further faith, that at the time he so served the said copy he shewed the said original petition to the said agent. A. B. no grow meaning thereof, uniels in

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Affidavit of serving an order on a clerk in court.

defendant the yage nouses thereof, should wi hin

Between A. B. complainant, and C. D. complainant.

G. H. of, &c. maketh oath, that he this deponent did on the day of perfonally ferve Mr. with a true copy of an order made in this cause, bearing date, &c. whereby it was ordered

ordered, that, &c. (bere fet forth the ordering part) or to that effect; and this deponent-did at the fame time thew unto the faid Mr. - the original order duly passed and entered; which said Mr .-is clerk in court for in this cause; as this deponent is informed and believes.

- maketh oath, that he this de-

Sworn, &c.

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peneer dil on the -- day of -- intens Affidavit of serving an order to confirm the Mafter's report, unless cause. at the leat of

Between A. B. plaintiff, and age aid die -wound and on the control and to the as on the humble pet-

H. of, &c. maketh gath, that he this deponent did on the day of personally ferve the defendant C. D. with an order made in this cause, bearing date the day of whereby it was ordered that the report made in this cause by Mr. B. one of the Masters of this court, dated the day of and all the matters and things therein contained, should stand ratified and confirmed by the order, authority, and decree of this honourable court, to be observed and performed by all parties thereto, according to the tenor and true meaning thereof, unless the defendant having notice thereof, should within eight days after such notice shew, unto this court, good cause to the contrary, and at the same time shewing the said C. D. the said original order duly passed and entered.

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G. H.

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Sworn, &c.

Affidavit

Affidavit of ferving an order on two clerks in court.

Between C. D. complainant, and E. F. defendant.

A. B. of, &c. maketh oath, that he this deponent did on the day of last, leave at the feat of Mr. --- of the Six Clerks Office, with his agent there, a true copy of an order in writing in this cause, duly passed and entered, bearing date the --- day of the faid---whereby it was ordered, that, &c .- And this deponent further faith, that he did on the fame day also leave at Mr. --- 's feat, with his clerk or agent there, another copy of the faid order in writing, purporting as aforefaid; which faid Mr. is clerk in court for the, War and the faid Mr. -- for the --- as this deponent is credibly informed and verily believes: And this deponent at the same time shewed each of the said respective agents, he so served as aforesaid, the faid original order.

Affidavit of Jerving an injunction.

Between A. B. complainant, and C. D. defendant.

G. H. of, &c. maketh oath, that he this deponent did on the—day of—personally serve the defendant in this cause with a true copy of an injunction in this cause issued out and under the seal of this honourable court, bearing teste the—day of—instant [or now last past] and this deponent did at the same time shew unto the said defendant the original writ of injunction under seal

feal of this honourable court, whereby the faid defendant was injoined, &c. [bere fet forth the injoining part of the injunction, concluding with these words, or to that effect.]

G. H.

And this of-

Sworn, &c.

Affidavit, where the defendants live in different counties, to obtain an order, that service of an order to confirm a Master's report nisi, on the clerk in court, may be good service.

Between A. B. — — plaintiff, and C. D. E. F. and G. H. defendants.

was ordered, coats

J. K. of, &c. maketh oath, that the said several defendants live, or reside, at a great distance from each other in several counties of England, to wit, the said C. D. at L. in the county of D. the said E. F. at T. in the county of Y. and the said G. H. at S. in the county of R. as this deponent is informed and verily believes.

Affidavit of producing all deeds and writings before a Master.

Between A. B. plaintiff, and C. D. defendant.

C. D. the defendant in this cause maketh oath, that he this deponent, or any other person or persons for his use, to his knowledge or belief, or with his privity or consent, have not, nor hath, nor ever had in his or their custody or power, any deeds, books of account, papers or writings whatsoever relating to the matters in question in this cause, other than and except the several deeds, books of account, papers and writings mentioned and contained in the schedule hereunto annexed.

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Affidavit of serving a writ of execution of a decree, u n a clerk in court.

Between C. D. complainant, E. F. defendant.

A. B. of, &c.—maketh oath, that he this deponent did on the—day of this inftant—deliver unto Mr.—the defendant's clerk in court, a true copy of a writ of execution of a decree, bearing teste at Westminster the—day of—and at the same time shewed him the said writ of execution under seal of this honourable court, whereby the defendant was injoined or directed to, &c.

A. B.

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Sworn, &c.

Affidavit of serving a writ of execution of a decree, &c. upon the parties.

Between A. B. complainant, C. D. defendant.

E. F. of, &c. maketh oath, that upon, &c. last, he this deponent did personally serve the defendant with a writ of execution of a decree made in this cause, bearing sesse the—day of—last past, by shewing the said writ under seal of the said court unto the said defendant, at his house in, &c. and at the same time delivering unto him a true copy thereof; by which decree and writ the defendant was injoined to pay, &c. in the said decree and writ mentioned; and at the same time this deponent shewed unto the said defendant a letter of attorney executed by the complainant under his hand and seal, impowering this deponent to ask and receive of the said defendant the said Vol. I.

Aftonbits, [the forms of.]

fum of, &c. A copy of which said letter of attorney this deponent then also left with the said defendant, of whom he did then demand the said sum of, &c. but the defendant did not then pay the same, or any part thereof, to this deponent; nor hath he yet paid the same to this deponent, or to the plaintiff, or to any other for his use, to this deponent's knowledge or belief.

E.F.

Sworn, &c.

Affidavit of baving discovered new matter for a bill of review.

Between A. B. plaintiff, C. D. defendant.

C. D. the defendant maketh oath, that fince the time of pronouncing the decree in this cause, he, this deponent, hath discovered new matter of consequence in the said cause, particularly that the plaintist on, &c. did, &c. which this deponent could not possibly know so as to make use thereof in his defence, at the time of pronouncing the said decree.

C. D.

Sworn, &c.

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Affidavit of waiting at the Rolls, to receive
Money reported due.

Between John Farr — plaintiff, James Chapman, Charles Rayner, and William Goudge — defendants.

JOHN Farr the plaintiff in the above cause, maketh oath, that he did attend at the chappele of the Rolls in Chancery-lane, within the liberty thereof, and county of Middlesex, from the hour of ten of the clock in the forenoon of this 17th

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Sworn, &c.

Affidavit of facts for further adjourning cause.

JOHN Rayner one of the solicitors of this honourable court maketh oath, that he this deponent hath made diligent inquiry after the defendant C. M. and particularly of O. P. his solicitor, and L. M. his clerk in court, in this cause, where the said C. M. could be heard of, or met with, so as to serve him the said C. M. with a subpana, to hear judgment in this cause, but neither the said O. P. or L. M. could or would inform this deponent, where the said C. M. could be found.

7. R.

Sworn, &c.

(2dly) Of Petitions in general.

A Petition is the request of a person in writing, directed to the Chancellor or Master of the Rolls, shewing some matter or cause, whereupon the petitioner prays some direction or order.

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In some cases petitions may be preferred before, as well as after a bill filed; as for a person to be

admitted in forma pauperis.

Form and brevity are the two things chiefly to be observed in drawing them. And all petitions, even those to be admitted in forma pauperis, are to be ingrossed on treble six-penny stamps: but after admission without stamps.

Most things, which may be moved for of course,

may be also petitioned for.

And petitions are upon fo many various and different occasions, that to enumerate them in particular would be endless: It may be sufficient to obferve in general, that they are either for matters of course, as for a commission to plead, answer or demur, &c. or for a guardian to be affigned for an infant defendant (if in the country) and to take the infant's answer by such guardian: or if the defendant be a lunatick, or an ideot, that he may answer by his committee (naming him) appointed by the court. But if the infants live in London, or within ten miles thereof, (unless upon some extraordinary occasion), they appear in court with some fit person to be their guardian; first writing a note of the plaintiff's and defendant's names, and underneath that the faid infant prays that such a one (naming him) may be appointed his guardian to answer the plaintiff's bill and defend this suit; which the court usually grants, if they see no cause of impediment against the person to be assigned guardian; and an order is drawn up thereupon by the Register, and entered: and then the answer is fworn by fuch guardian. And petitions are also preferred for several other matters; as to enlarge time for answering, or for subpana's to rejoin to turnable immediately, and for commissions to examine witnesses in the country, or for enlarging publication, or paying money, &c. or for remov-

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ing any hardships; as to stay process of contempt, on just cause, &c. or for amending of

mistakes, &c.

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Sometimes they are upon collateral matters, as they have relation to some former suit or cause depending, or to an officer of the court, as to have a clerk or solicitor's bill tax'd, or to oblige him to

deliver up papers, &c.

And where a matter comes before the court by petition, and the court makes any order thereupon without any attendance, and the adverse party would discharge such order, or have any thing done touching the matter of such petition, he commonly applies by way of petition also; but oftentimes on motion the court will do it.

Tho' no former order made in court, shall be altered or even explained upon petition; yet the execution thereof may be staid upon petition, for a short time, till the matter can be moved and debated in court. Ord. Chan. 151. Nor shall any commission for examining witnesses be discharged, or depositions or examinations suppressed upon petition, unless the matter be first referred to a Master, and a certificate had thereupon. Nor may an injunction to stay suits at law be granted, revived, dissolved, or staid upon petition, nor an injunction of any other nature pass by an order upon petition, without notice, and a copy of the petition first given to the other side; the petition to be filed with or drawn up by the Register, and the order thereupon entred. Ord. Chan. 151. And no sequestration, dismission, retainer upon dismission, or final order is granted upon petition. Nor shall the commitment of any person taken upon process of contempt be discharged, but upon hearing the opposite party. Ord. Chan. 151.

By King, Lord Chancellor, admitted that a decree, much more an interlocutory order, if gained

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by collusion, may be set aside on a petition. 3 P.

Will. Rep. 111.

The delivering over the body of a ward, or posfession of trust estate, cannot be awarded on petition, but bill must be brought for the purpose, 3 P.

Will, Rep. 154.

After the petition is drawn and ingrossed, it must be delivered to the Chancellor's or Master of the Rolls's secretary, who is to get it answered; and if it be a matter of course it is forthwith granted; but if it requires examination, or the other side to be heard, then it is usually ordered, that all parties attend the next day of petitions; at which time the matter is debated, and such order made as the court thinks sit. And in such cases assistant are frequently necessary, to shew the court how matters stand on both sides.

And matters of great consequence which require dispatch, may be petitioned for in the vacation. And as for petitions of course, they are frequently preferred in the vacation, to the Master of the Rolls.

The Lord Chancellor is generally petitioned touching the setting down of pleas, demurrers or exceptions to be argued, and concerning special orders made by himself, and for rehearings: but in most other cases, application is made to the Master of the Rolls, who may also be petitioned to rehear a cause heard before himself.

No fubpana, attachment, or other process of this court, (where made out by order of court) shall issue out upon any petition, until an order be drawn up and entered thereupon: and all process otherwise issued shall be void. Vide Ord. Chan. 40.

And no order made upon any petition (unless the same be by way of summons) shall be effectual to ground fubpana's, or other pracess, but where within three days in term-time, or a week in the vacation, after the order granted, the same be drawn

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up and entered with the Register; to the end no person may be surprized by any private order. Vide Ord. Chan. 217. But this rule by modern practice seems now otherwise; and such order may be drawn up almost at any time, provided it be before such subsections or process issues.

Orders upon petitions must be drawn up, passed, entered, and served by delivering a copy to the other party, as other orders are. Ord. Chan. 49,

In an injunction cause, if the bill be not filed in four days after the return of the subpana, and costs are preferred for want thereof, the plaintiff, upon motion or petition, may obtain an order for the defendant to accept the bill nunc pro tune, upon payment of costs out of purse, which is eight shillings and six-pence. The petition is as follows:

Between, &c.

To the right, &c.

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The bumble petition of the plaintiff,

THAT your petitioner having exhibited his bill in this honourable court against the defendant, thereby praying (among other things) for an injunction, &c. and having served the defendant with process to appear, and answer the same, the said defendant appeared accordingly; but your petitioner's bill not being at the exact day, tho in a very sew days after, the defendant's clerk in court refuses to accept the same, and insists upon costs.

Wherefore your petitioner humbly prays your Honour, that the defendant's clerk in court may be ordered to accept your petitioner's

Fetitions, [the forms of.]

tioner's bill, upon payment of costs out of purse.

And your petitioner, &c.

In a petition for further time, the defendant must always mention what time he had before obtained, otherwise he might delay the cause an unreasonable length of time.

The defendant had obtained three orders for time, and in his last order had got near as much as in the first, without mentioning that he had before obtained any time. The plaintiff moved to discharge the last order. Lord Chancellor said, it was not fairly obtained, but only by a suppression weri, and accordingly discharged the order.

As to the time a defendant may get to answer, it depends intirely upon the pleasure of the court, and the circumstances of the case.

Petition for further time after defendant has entered bis appearance with the Register.

To the right, &c.

Sheweth,

That your Honour, on the—day of—last, was pleased, on your petitioner's entering his appearance with the Register on an attachment, to grant him a commission to take his answer returnable without delay, and to give him time to the last week in the last term to return the same, and to stay all proceedings for want thereof in the mean time.

That your petitioner appeared with the Register, and issued out a commission accordingly, and hath taken his said answer, but his habitation being in the same is not yet returned.

Your petitioner therefore humbly prays your Honour to give him ten days time to return his faid answer, and to stay all proceedings for want thereof in the mean time.

And, &c.

Petition to set down a cause for bearing on the equity reserved.

To the right bonourable, &c.

A. B. quer. C. D. def.

The bumble petition of the plaintiff,

Sheweth.

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THAT at the hearing of this cause before your Lordship, on, &c. last, your Lordship was pleased to order an issue at law to be tried, whether, &c. That the issue hath since been tried at law, according to the directions of the said order; and the defendant in this cause, who was plaintiff in the said action, became nonsuit upon full evidence.

Your petitioner therefore humbly prays your Lordship to appoint a short day for setting down this cause on the equity reserved, and that your petitioner may have leave to move for his costs at law, and of his suit at the said hearing.

And, &c.

Jan. 1767. Let the cause be set down to be heard on, &c. whereof forthwith give notice.

C. Cana

Petition

Petition for a rebearing the the caufe.

To the right bonourable, &c.

A. B. quer. C. D. def.

The bumble Perition of the defendant,

Sheweth,

aggrieved by a decretal order made in this cause, the day, &c. by, &c. whereby your petitioner is ordered and decreed to pay unto the plaintiff the sum of 500 l. by, &c. next, with interest for the same, from the time of the said hearing until the money be paid; which sum of 500 l. or the greatest part thereof, having been long since paid, and proof thereof made, as your petitioner conceives, and is advised;

Your petitioner humbly prays, that your Lordship will be pleased to vouchfase a rehearing in this cause before your Lordship, he submitting to pay what costs the court shall award, in case his complaint be

found groundless.

And your petitioner shall ever pray, &c.

Petition to enlarge time for payment of money. Sheweth.

THAT on the——last your Honour was pleased to order your petitioners to bring into this court the sum of —— within a fortnight then next, and thereupon the injunction to be continued to the hearing. That the matter arising in —— your petitioners have not been able to get the same money returned, but the defendant having three several judgments for——each

each against your petitioners on bail-bonds, they have very good security, and your petitioners shall speedily get the money returned, and paid into court.

Your petitioners therefore humbly pray your Honour to enlarge the time for bringing the faid money into court till the instant, and to stay all proceedings in the mean time.

And, &c.

Be it so, unless cause be shewn before me upon Tuesday next, at three in the afternoon, of which give notice forthwith.

Petition to appoint a day for an absconding defendant to appear.

To the right, &c.

Sheweth.

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HAT your petitioners some time since exhibited their bill in this court against the defendant A. B. and others, and in the month of - last took out process of subpana under seal of this court against him the said defendant, to compel him to appear to, and answer the faid bill. and the utmost endeavours have been used to serve him with the faid process, and the most strict inquiry hath been made after him at his last known usual place of abode, and at several other places, but cannot yet find him to ferve him; and there is reason, and just ground to believe that he absconds for debt, and to avoid being served with the process of this honourable court, and of other courts, as by affidavit annexed appears; and in regard the faid defendant has not yet appeared to your petitioners faid bill.

Your

Your petitioners therefore humbly pray your Honour to appoint a short day for the said A. B. to appear to your petitioners said bill, pursuant to the act of Parliament made in the sifth year of his present Majesty's reign.

And, &c.

Petition to withdraw a plea.

To the right bonourable the Master of the Rolls.

A. B. quer. C. D. def.

The bumble petition of the defendant,

Sheweth.

THAT the plaintiff having filed his bill in this honourable court against your petitioner, and your petitioner having put in his plea, and demurrer thereto, your petitioner is since advised to make other defence to the said bill.

Your petitioner therefore prays your Honour that he may withdraw his faid plea and demurrer, upon paying the plaintiff or his

clerk 20 s. costs.

And your petitioner shall pray, &c.

Petition for a commission after a Serjeant at

Sheweth,

THAT your petitioner appeared to the plaintiff's bill the _____ instant, which appears to have been filed the _____ day of ____ last, and your petitioner finds he is in contempt to a Serjeant at arms, upon a non est inventus returned upon a commission of rebellion of not appearing thereto in time.

That

That your petitioner is desirous forthwith to discharge his said contempt, by paying the plaintiffs their costs in respect thereof, and also of putting in his answer to the plaintiff's bill as soon as may be, in regard your petitioner lives in the county of—, and must answer by commission.

Your petitioner therefore humbly prays your Honour, that the plaintiff's clerk in court may forthwith deliver to your petitioner's clerk in court a bill of costs, in respect of your petitioner's contempt, and that it may be referred to one of the Mastes of this court, to tax the said bill, in case the said clerks in court differ in settling the same; and that upon your petitioner's payment of the said costs so settled or taxed, all further proceedings upon the said contempt may be stay'd in the mean time, and that your petitioner may be at liberty to sue out a commission to plead, answer, or demur, and have a month's time to return the same.

And, &c.

When the plaintiff and defendant join in commission, and the clerks in court or solicitors differ about striking commissioners names, the way is to apply by petition to the Master of the Rolls to strike the names.

In causes where the Crown is interested, it is necessary to make the Attorney General a party, and none of the King's Counsel can be retained to plead against the Crown, without first obtaining an order from his Majesty for that purpose, which is done by petition in the following manner:

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To the King's most excellent Majesty.

The bumble petition of A. B. and others,

Sheweth, Mento gilis ila firm

THAT your petitioners are plaintiffs in a cause in Chancery, wherein your Majesty's Attorney General and others are defendants. That your pentioners have all along advised with your Majesty's Solicitor General, and T.C. Esq; two of your Majesty's Counsel learned in the law; but forasmuch as they cannot plead in the said cause without your Majesty's royal licence to the said Mr. Solicitor General and T.C. Esq; to be of Counsel for them in the said cause;

Your petitioners therefore humbly pray your Majesty will be most graciously pleased to grant your royal licence for the said Mr. Solicitor General and the said T. C. Esq. to be of Counsel for your petitioners in the said cause, as often as there shall be occasion.

And your petitioners, &c.

This petition is wrote upon unstamped paper, and earried to the Secretary's Office.

Here follows the order upon the above petition:

HEREAS A. B. &c., have by their petition humbly represented unto us, that they are plaintiffs in a cause in Chancery, wherein our Attorney General and others are defendants, and that they all along have advised with our trusty and well-beloved Solicitor General, and T. C. Esq.; two of our Counsel learned in the law. But for a much as they cannot plead for the petitioners in the said cause without our royal licence, dispensing therewith; they have therefore most humbly prayed us to grant our royal licence to our said Solicitor General

Petitions, [the forms of.]

ral and T.C. to be of Counsel for them in the said cause: We are graciously pleased to condescend to their request, and we do accordingly hereby dispense with our said Solicitor General and T.C. and give them power, licence, and permission to appear in the behalf of the said A.B. &c. to be of Counsel for them in the said cause, as often as there shall be occasion.

day of ______ 1744, in the eighteenth year of our reign.

By bis Majesty's command,
Holles Newcastle.

Solicitor General and T. C. Efq; licence to plead.

Towards the top thereof is the King's seal, and his name wrote with his own hand. The order is upon treble half-crown stamps. The whole expence hereof is about eight pounds, if it be for one Counsel to plead; about ten pounds for two Counsel, and about twelve pounds for three.

This order must be shewn to the Counsel permitted to plead thereby, at the time you deliver your briefs.

Petition to Lord Chancellor for his Lordship's letter to a Nobleman.

Between A. B. — plaintiff, C. Duke of E. defendant.

To the right bonourable the Lord High Chancellor of Great Britain.

The bumble petition of the plaintiff,

T HAT your petitioner hath exhibited his bill into this honourable court against the said C.

Duke

Duke of E. who in regard to his quality cannot be compelled, by the ordinary process of this court,

to appear to your petitioner's faid bill;

Your petitioner therefore most humbly prays your Lordship's letter missive directed to the said C. Duke of E. desiring his Grace to appear to your petitioner's said bill on the—day of—next.

And your petitioner shall ever pray, &c.

Lord Chancellor's letter missive to a Nobleman, to appear and answer.

A FTER my hearty commendations to your A Lordship, this is to inform you, that there is a bill exhibited in the high court of Chancery against your Lordship by A. B. &c. of which I have thought sit to give your Lordship notice, rather by this letter than by awarding his Majesty's ordinary process against you; wherefore I do, at the request of the said A. B. (according to the manner used to persons of your quality) desire your Lordship to give order for the entring your appearance the day, &c. next, and putting in your answer to the said bill, according to the usual course, with all convenient speed; not doubting your care herein:

Lincoln's-Inn Fields. I am,

TOWNERS BLAD THERE

my Lord,

your Lordship's

bumble servant,

Camden. C.

Petition

Petition for a subpoena returnable immediately.

Between A. B. plaintiff, 10 vid od

To the right beneurable the Master of the Rolls,

The bumble petition of the plaintiff,

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THAT your petitioner having filed his bill in this honourable court against the said defendant, and the said defendant living and residing within—miles of the city of London, as by the affidavit annexed appears;

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to take out process of subpana for the said defendant to appear to and answer your petitioner's said bill, returnable immediately.

And your petitioner shall ever pray, &c.

Petition for process of contempt returnable im-

Between A. B. plaintiff,

C. D. defendant.

To the right bonourable the Master of the Rolls,

The bumble petition of the plaintiff,

Sheweth,

THAT your petitioner, in Easter Term last past, exhibited his bill in this honourable court against the defendant, to which the said de-Yor, I. H fendant. fendant appeared, but hath neglected to put in his answer thereto; and the said defendant living and residing within the distance of —— miles from the city of London, as by the affidavit annexed appears;

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to make out process of contempt against the said defendant, for want of his answer, returnable immediately.

And your petitioner shall ever pray, &c.

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Petition to amend a bill, by adding a defend-

Between A. B. plaintiff, C. D. defendant.

To the right bonourable the Master of the Rolls,

The bumble petition of the plaintiff,

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THAT your petitioner filed his bill in this honourable court against the defendant in Term last, to which the defendant hath appeared and put in his answer; upon which your petitioner is advised to make E. F. a defendant in his cause.

Your petitioner therefore most humbly prays your Honour, that he may have leave to amend his bill, by adding the said E. F. a defendant thereto, with apt words to charge him.

And your petitioner shall ever pray, &c.
Petition

Petition to amend a bill, on payment of twenty

Shillings costs.

Between A. B. — plaintiff, and C. D. and others defendants.

To the right bonourable, &c:

The bumble petition of the plaintiff,

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THAT your petitioner having filed his bill in this honourable court against the defendant C. D. and others, the said defendant C. D. hath only put in his answer thereto, (none other of the defendants having yet appeared thereto); upon perusal of whose answer, your petitioner is advised by his counsel to amend his bill.

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to amend his bill, upon payment of twenty shillings costs to the said defendant G. D. or his clerk in court, in respect thereof.

And your petitioner fall ever pray, &c.

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Petition

Petition for a plaintiff to dismiss his own bill with costs.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the plaintiff,

Sheweth,

HAT your petitioner having exhibited his bill into this honourable court against the defendant, since which the said defendant hath put in his answer thereto, upon perusal whereof your petitionen is advised to dismis his bill.

Your petitioner therefore most humbly prays your Honour, that his said bill may stand dismissed out of this court with costs to be taxed by one of the Masters of this court.

And your petitioner shall ever pray, &c.

Petition to refer an examination to a Master, and to tax costs upon the breach of an order.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable the Master of the Rolls,

The humble petition of the plaintiff,

Sheweth,

That the defendant having been examined on interrogatories touching a contempt laid to his charge, for breach of an order of this court of the — day of — last, your petitioner hath

examined witnesses for proof thereof.

Your

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Your petitioner humbly prays your Honour, that it may be referred to a Master of this court to consider of the said examination and depositions, and to certify whether the defendant hath committed the contempt laid to his charge, and to tax costs according to the general order in that behalf.

And your petitioner shall ever pray, &c.

Petition to be discharged out of custody of the Serjeant at arms.

Between A. B. plaintiff, and G. D. plaintiff, E. F. and G. H. defendants.

To the right bonourable the Master of the Rolls,

The bumble petition of the defendants,

Sheweth,

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our

THAT your petitioners are and have been (for above a fortnight) in cultody of the Serjeant at arms attending this honourable court, for not answering to the plaintiff's bill, which your petitioners have since answered, and paid the costs of the contempt, and the clerk of the other side doth consent to your petitioners discharge, as by the certificate annexed appears.

Your petitioners therefore humbly pray your Honour, that your petitioners may be discharged out of the custody of the Serjeant at arms, paying their fees.

And your petitioners shall ever pray, &c:

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Petition

Petition for a return of a writ of inquiry,

Between A. B. plaintiff, C. D. defendant,

To the right bonourable the Master of the Rolls,

The bumble petition of the defendant,

Sheweth,

THAT your petitioner was this day served with the injunction of this court, to stay his proceedings at law for the matters here in question, with the usual clause of liberty, in default of a plea, to enter up judgment, with stay of execution.

CAME OF SERVICE

That there being default of a plea, your petitioner had an interlocutory judgment, and a writ of inquiry iffued, and was long fince delivered to the sheriff, who executed the same this day.

That without a return of the writ, your peti-

tioner cannot have a final judgment.

Your petitioner humbly prays your Honour, that he may be at liberty to call for the return of the faid writ, and to enter up a final judgment, he being willing to flay execution according to the faid injunction.

And your petitioner shall ever pray, &c.

ACTION FOR THE TENED THE COLUMN

Petition

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Petition for plaintiff to give security to answer costs, and for a month's time to answer after such security given.

Between A. B. plaintiff, C. D. defendant,

To the right bonourable, &c.

The bumble petition of the defendant,

Sheweth,

THAT the plaintiff having filed his bill in this honourable court against your petitioner, and caused a subpana to appear and answer to the said bill to be served on your petitioner, to which your petitioner hath accordingly appeared, and taken a copy of the said bill; and his time for answering not being yet expired, nor being in contempt.

That the plaintiff by his bill stiles himself of New York in the West Indies in parts beyond the seas, and

your petitioner lives in the city of London.

Your petitioner therefore most humbly prays your Honour, that the plaintiff may procure some sufficient person here in England to give security according to the course of the court, to answer costs before your petitioner be obliged to answer the said bill, and that your petitioner may have a month's time to plead, answer, or demur to the said bill after such security given.

And your petitioner, &c.

A petition of plaintiffs to be admitted in forma

Between N. M. and S. M. — complainants, H. B. and E. his wife, S. N. L. L. and H. his wife, and S. M. and M. defendants. his wife,

To the the right bonourable, &c.

The bumble petition of the plaintiffs,

Shewesb.

THAT your petitioners having filed their bill in this honourable court against the said defendants; thereby setting forth, that H.O. late of — in the county of —, widow, deceased, at the time of her death, which happened in April 1731, was possessed of a personal estate, value 1500, and died intestate without issue, leaving your petitioners and the desendants E.B.S.N.H.L. and M.M. her nearest relations and next of kin, to whom her personal estate ought to have come and been equally divided amongst them, according to the statute of distribution of intestates estates.

That the intestate dying at — aforesaid, and your petitioners living very remote from her, and defendant E. wife of defendant B. living with or near the intestate at her decease, obtained administration to her, and she and her said hulband possessed themselves of all the intestate's personal estate and essects, and your petitioners being intire strangers to the intestate's circumstances, the said defendant B. and his wife sent to the plaintiff N. 561. and to the plaintiff S. 501, separately, assuring them that

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the faid respective sums were your peritioners respective full distributive shares of the faid intestate's personal estate, and at the same time fent general releafes therewith, which your petitioners upon fuch report and affurances were prevailed upon to execute, relying on fuch affurances to be true.

That your petitioners have fince discovered that the faid intestate died possessed of a personal estate, value 1,500 1. as aforefaid, and that they were imposed upon in the faid releases, the same being obtained by fraud and false suggestions; and therefore filed their bill in this honourable court against the said defendants to set aside the said releases further than they extend as discharges for 501. and 561. and to have an account of all the intestate's personal estate, and that your petitioners may be paid their full and distributive shares of all the faid intestate's

personal estate.

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That the faid defendants H. B. and E. his wife, have put in their feparateanswers to your peritioners faid bill; and the faid H. B. (amongst other things) admits the faid inteffate died without iffue, possessed of a personal estate of about 1000 l. value, which he and his faid wife possessed themselves of, and that the petitioners were intitled as aforefaid, and that they received no more than the aforesaid respective fums of 56 l. and 50 l. and were induced to give releases, or discharges, as aforesaid, which he says he believes they would not have given, if truly informed of the said personal estate: And the said E. B. (amongst other things) admits the said intestate died possessed of a considerable personal estate; but infifts that your peritioners executed general releases to her and her husband, at the times they received the faid respective sums of 561. and 501. and insists on their being sufficient discharges; but has not thought fit to plead the faid releases.

That

That your petitioners, by reason of their poverty, as appears by affidavit annexed, are utterly unable to prosecute their said suit, unless they be admitted

fo to do in forma pauper'.

Your petitioners therefore most humbly pray your Honour, that they may be admitted to prosecute their said suit in forma pauper; and that Mr. — may be assigned their Counsel, and Mr. — their Six-clerk.

And your petitioner shall ever pray, &c.

I bumbly conceive that the plaintiffs have just cause to be relieved touching the matters of this petition, and for which they have exhibited their bill.

A. B.

Petition of a defendant to be admitted in forma pauperis.

Between A. B. plaintiff, C. D. defendant,

To the right bonourable, &c.

The bumble petition of the defendant,

Sheweth.

THAT your petitioner is served with process to appear to and answer the plaintiff's bill, but being very poor, (as by affidavit appears) is (by reason of such his extreme poverty) unable to make his defence thereto, if not permitted to defend in forma pauperis.

Your petitioner therefore most humbly prays your Honour to admit him to defend this suit in forma pauperis, and to assign him for his Counsel Mr. ——, and Mr. —— for

his Six-clerk.

And your petitioner sball ever pray, &c.
Petition

Note: A big is officially collected, there

petition (after an attachment for a dedimus potestatem, and for time to return the answer thereon.

Between A. B. plaintiff, C. D. defendant,

To the right bonourable, &c.

The bumble petition of the defendant,

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THAT the plaintiff having exhibited his bill into this honourable court against your petitioner and others, and served your petitioner with process returnable the first day of last Term, your petitioner appeared thereto, but the writings that related to the matters in question not being in your petitioner's hands, your petitioner could not possibly procure the same so as to perfect his answer by the time allowed by the rules of this court; whereupon your petitioner has been lately arrested upon an attachment of contempt issuing out of this honourable court.

That your petitioner living one hundred miles distant from London, and being willing to enter his appearance with the register by his clerk in court

as upon the attachment;

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to take out a dedimus potestatem, returnable the first return of next Term, to take his answer, and that he may have a week allowed him within the said Term, to return the same, and that in the mean time all further proceedings for want of the same may be stayed.

And your petitioner, &c. Note;

Petitions, [the forms of.]

Note; This is usually answered, that defendant enter his appearance with the Register in four days,

Petition to put in an answer without oath.

Between A. B. plaintiff, C. D. defendant,

To the right bonourable, &c.

The bumble petition of the defendant,

Sheweth,

THAT your petitioner is made a party to the plaintiff's bill exhibited in this court, merely for the fake of form.

That the plaintiff is willing that your petitioner's answer to the said bill should be put in without oath, and hath by his clerk in court signified his consent thereto.

Your petitioner therefore humbly prays your Honour, that he may have leave to put in his answer without oath to the plaintiff sbill.

And your petitioner shall ever pray, &c.

Note; To this petition and all other petitions which require the clerk in court's confent, he figns in these words, I do consent to the prayer of this petition, if your Honour shall please to order the same.

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Petition

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Petition for time to answer.

Between A. B. plaintiff, as at side association C. D. defendant.

To the right bonourable, &c.

The bumble petition of the defendant,

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HAT the plaintiff having filed his bill in this honourable court against your petitioner and others, whereto your petitioner hath appeared, and taken an office copy thereof, and his time for answering not being yet expired, nor being in contempt;

Your petitioner therefore most humbly prays your Honour, to grant unto your petitioner a month's time to plead, answer or demur to the plaintiff's bill, not demurring alone.

And your petitioner shall ever pray, &c.

In Chancery.

Between W. L. plaintiff, and W. W. and others defendants.

To the right bonourable the Master of the Rolls.

The humble petition of W. W. one of the defendants to the bill of complaint of W. L. complainant,

Sheweth.

THAT your petitioner has already obtained a month's time to answer the plaintiff's bill, but the same being filed for a discovery of a title

to an estate, your petitioner has sundry deeds and papers to look into, &c. before he can make a sull answer to the plaintist's bill, which he has not yet been able to accomplish; and for as much as your petitioner is not in contempt,

Your petitioner therefore humbly prays your Honour that he may have a month's further time to plead, answer or demur to the plaintiff's bill; and that all proceedings for want thereof may be in the mean time stayed.

And your petitioner shall ever pray, &c.

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In Chancery.

Between W. L. plaintiff, and W. W. and others defendants.

To the right bonourable the Master of the Rolls.

The bumble petition of W. W. one of the defendants, to the bill of complaint of W. L. complainant,

Sheweth,

THAT your petitioner has already obtained two orders for a month's time each to answer the plaintiff's bill, but the same being filed for a discovery of a title to an estate, your petitioner has sundry deeds and papers to look into and peruse, before he can make a full answer to the plaintiff's bill, which he has not yet been able to accomplish; and for as much as your petioner is not in contempt,

Your petitioner therefore humbly prays your Honour, that the last order made in this cause may be enlarged for a fortnight's further time, to plead, answer or demur to the plaintiff's bill, and that all proceedings for want thereof may be in the mean time stayed.

And your petitioner, &c.

Petition of a feme covert to answer without ber busband.

Between A. B. — plaintiff, C. D. and E. his wife, defendants.

To, &c.

The bumble petition of the defendant E.D. wife of the defendant C.D.

Sheweth.

THAT the plaintiff hath exhibited his bill in this honourable court against your petitioner and her said husband, whereto your petitioner hath appeared; and in regard your petitioner's said husband hath absconded and lived separate from her these two years;

Your petitioner therefore most humbly prays your honour, that she may be at liberty to put in her answer to the plaintiff's said bill without her husband.

And your petitioner, &cc.

Petition for time to answer and return a dedimus.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The humble petition of the defendant,

Sheweth,

THAT the plaintiff having filed his bill against your petitioner, he has appeared there-

to and taken a copy.

That your petitioner residing in the county of —a commission is issued to take his answer, and made returnable in three weeks, &c. but your petitioner finds he shall not be able to return the same within the time limited by the strict rules of the court; and forasmuch as your petitioner is not in contempt, nor has yet had any order for time;

Your petitioner humbly prays your honour, that he may have time to put in his answer to the said bill, until——, and that all process of contempt for want thereof be in the mean time stayed.

And your petitioner, &c.

Petition to examine a witness de bene esse before issue joined.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the plaintiff,

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THAT your petitioner having filed his bill in this honourable court against the said defendant, whereto he hath appeared; but the said defendant living a great distance from London in the country, he hath obtained time to put in his answer till the first day of next Hilary Term.

That one G. H. of, &c. gentleman, a very material witness for your petitioner in this cause, and without the benefit of whose evidence, your petitioner (as he is advised) cannot safely proceed to a hearing of this cause; and the said G. H. being seventy years of age or upwards, and very weak and infirm, so that in all probability he may not live till your petitioner can bring his cause to an issue, as by the affidavit annexed appears.

Your petitioner therefore most humbly prays your Honour, that he may be at liberty forthwith to examine the said G. H. de bené esse, as a witness for your petitioner in this cause, saving all just exceptions.

And your petitioner shall ever pray, &c.

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Petition for a special commission, and for commissioners names, or in default, the commission to issue ex parte.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the defendant,

Sheweth,

THAT on the day of last, the plaintiff exhibited his bill in this honourable court against your petitioner, who has appeared thereto and taken a copy.

That your petitioner's clerk in court has oftentimes applied to the plaintiff's clerk for commifioners names for taking your petitioner's answer, who refuses to give names for that purpose.

That your petitioner refides in the county of —, and is advised to plead, answer and demur to the said bill.

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to take out a commission to plead, answer and demur to the plaintiff's bill; and that the plaintiff's clerk in court may in two days afternotice hereof give commissioners names to the petitioner's clerk in court, to take your petitioner's plea, answer and demurrer, or, in default thereof, that your petitioner may be at liberty to take out the said commission directed to his own commissioners.

And your petitioner, &c.

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Petition for a commission to assign a guardian, and to take the defendant's answer by such guardian.

Between A. B. and another, plaintiffs, C. D. — defendant,

To the right bonourable, &c.

The bumble petition of the defendant,

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THAT the plaintiffs exhibited their bill in this honourable court against your petitioner, to which he has appeared and taken an office copy.

That your petitioner reliding in the county of —— has craved a commission to take his answer; and the plaintiffs have given commissioners names for that purpose.

But forasmuch as your petitioner is an infant, and cannot answer the plaintiff's bill, nor defend this suit without having a guardian assigned for that purpose;

Your petitioner therefore humbly prays your Honour, that he may be at liberty to fue out a commission to assign him a guardian, and to take his answer by such guardian.

And your petitioner shall ever pray, &c.

Petitions, [the forms of.]

Petition to take an answer de novo, and to amend the caption, and stay process.

> Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the defendant,

Sheweth.

THAT in Hilary Term last the plaintiff filed his bill in this honourable court against your petitioner, and a commission issued to take your petitioner's answer, by virtue whereof it was taken, returned and filed; but on looking into the same there appeared to be a mistake in the caption, whereupon the plaintiff obtained an order to suppress the said answer, it not appearing by the said caption that your petitioner was ever sworn to the truth of the said answer.

That in regard this is in your petitioner's own delay, who is defirous that this miftake should be rectified, and is ready and willing to pay the plaintiff his costs out of purse touching the said order;

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to sue out another commission directed to the former commissioners to take his said answer de nevo, and that the caption thereof may be rectified or amended; and that your petitioner may have three weeks time to return the same, and that all further proceedings for want thereof be in the mean time stayed.

And pour petitioner shall ever pray, &c.

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def plea A common petition to receive exceptions.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the plaintiff,

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THAT your petitioner having exhibited his bill in this honourable court against the defendant, who hath put in his answer thereto, and your petitioner being advised that the said answer is insufficient in several material points, hath caused exceptions to be taken thereto. But the said exceptions not coming in by the time limited by the rules of this court, the defendant's clerk in court resules to accept the same.

Your petitioner therefore most humbly prays your Honour, that the said defendant's clerk in court may receive the said exceptions.

And your petitioner shall ever pray, &c.

Exceptions cannot be ordered to be received as in due time after three terms from the putting in of the answer without special reasons.

Another petition to receive exceptions.

Between A. B. - - plaintiff,

C. D. and others. defendants.

To the right bonourable, &c.

The humble petition of the plaintiff,

Sheweth,

THAT your petitioner having exhibited his bill in this honourable court against the said defendant and others, the said defendant put in his plea and answer; on arguing of which plea on the day of—last, it was ordered that the same I 3 should

should stand for an answer, with liberty to your petitioner to except such matters as in the said

order are mentioned.

That your petitioner has many material exceptions to offer in pursuance of the said order, but the drawing up and entering of the said order, and preparing the said exceptions, which are long, having already run out more than the time of course for delivering exceptions, the defendant's clerk in court refuses to accept the same.

Your petitioner therefore most humbly prays your Honour, that the said defendant's clerk in court may now receive your petitioner's exceptions.

And your petitioner shall ever pray, &c.

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A common petition to refer exceptions.

Between A. B. plaintiff, C. D. defendant,

To the right bonourable, &c.

The bumble petition of the plaintiff,

Sheweth,

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T HAT your petitioner having filed exceptions to the defendant's answer, and the time for submitting being expired;

Your petitioner therefore most humbly prays your Honour, that it may be referred to one of the Masters of this court, to certify whether the said defendant's answer be sufficient in the points excepted to, or not.

And your petitioner shall ever pray, &c.
Anotha

Another petition to refer exceptions.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the plaintiff,

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THAT your petitioner having exhibited his bill in this honourable court against the said defendant, he appeared and put in his plea and answer thereto; on arguing of which plea, on the—day of——last, the same was ordered to stand for an answer, with liberty to your petitioner to except to such matters as in the said order are mentioned.

Your petitioner therefore most humbly prays your Honour, that it may be referred to one of the Masters of this court to look into your petitioner's bill, the defendant's plea and answer, and your petitioner's exceptions, and certify wherein the said plea and answer is insufficient.

And your petitioner shall ever pray, &c.

Petition to renew a sequestration.

Between A. B. plaintiff C. D. defendant.

To the right bonourable the Lord High Chancellor of Great-Britain.

The bumble petition of the plaintiff,

Sheweth,

HAT the defendant having refused to answer your petitioner's bill, all process of contempt to a sequestration hath been sued out against him, and a commission of sequestration hath been sued out, executed and returned; but your petitioner hath since discovered, that not above one third part of the said defendant's estate is sequestred, and that the said commission was committed to the hands of a person therein named, who neglected to sequester the said estate.

Your petitioner therefore most humbly prays your Lordship, that he may be at liberty to take out a new commission of sequestration to sequester the said defendant's estate, directed to new commissioners.

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And your petitioners shall ever pray, &c.

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Petition to withdraw a replication and amend a bill, upon payment of twenty shillings costs to such defendants as have answered.

> Between A. B. — — plaintiff, C. D. and others, defendants,

To the right honourable, &c.

The bumble petition of the plaintiff,

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THAT fome time fince your petitioner filed his bill in this honourable court against the faid defendants, to which they appeared and answered, and your petitioner replied, but no witnesses have been yet examined in the said cause.

That your petitioner is since advised to amend his said bill, by adding R. B. a defendant with proper charges; and forasmuch as this is in your petitioner's own delay;

Your petitioner most humbly prays your Honour, that he may have leave to withdraw
his replication, and amend this bill, as he
shall be advised; on amending the copies
of the said bill of such of the defendants
who have answered the same, your petitioner not requiring any answer to such amended bill from the said defendants who
have already answered.

And your petitioner shall ever pray, &c.

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Petitions for subpoena's to rejoin, and that serwice on the clerk in court may be good, and to join and strike commissioners names.

Between A. B. — — plaintiff, C. D. and others, defendants.

To the right bonourable, &c.

The bumble petition of the plaintiff,

Sheweth,

THAT your petitioner filed his bill in this court against the said defendants, who have appeared thereto, and put in their answers, to which your petitioner hath replied, and is desirous

to speed his cause.

Your petitioner therefore humbly prays your Honour, that he may be at liberty to take out fubpana's to rejoin, returnable immediately, and that service thereof on the defendants clerks in court may be deemed good service on the defendants, and that your petitioner may be at liberty to sue out a commission for examination of his witnesses, returnable without delay, and that the defendants clerks in court do, in four days after notice hereof, join and strike commissioners names with your petitioner's clerk in court, or, in default thereof, that your petitioner may have a commission directed to his own commissioners.

And your petitioner shall ever pray, &c.

Note; To the prayer of this petition may be added, And that your petitioner may be at liberty to examine in Term-time.

Petition to join and strike commissioners names, or in default, to issue a commission ex parte.

Between A. B. plaintiff, C. D. defendant,

To the right bonourable, &c.

The bumble petition of the defendant,

Sheweth.

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THAT on the — day of — last your petitioner was served with an order obtained upon the plaintiff's petition of the — day of — for a subpana to rejoin, returnable immediately, and that service thereof on your petitioner's clerk in court should be good service, and that the petitioner's clerk in court should in four days after notice join and strike commissioners names with the plaintiff's clerk in court, or that in default thereof the plaintiff might sue out a commission directed to his own commissioners.

That your petitioner, upon receiving the same, was ready to comply with the terms therein mentioned, and accordingly applied to the plaintiff's clerk in court, to join and strike commissioners names with him, who informed your petitioner's clerk in court, that he had not names, and put him off with trifling excuses.

That your petitioner has very good reason to believe that such excuses were made merely for delay; and in regard your petitioner hath several material witnesses, as he is advised, to examine, and is desirous the cause should be speeded;

Your petitioner most humbly prays your Honour, that the plaintist's clerk in court may in four days after notice join and strike commissioners names with your petitioner's

Petitions, [the forms of.]

titioner's clerk in court; or that in default thereof, your petitioner may fue out a commission for examination of witnesses, directed to his own commissioners.

And your petitioner shall ever pray, &c.

Petition to alter a commissioner's name in a commission, and for liberty to renew the same, and for time to return it.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the plaintiff,

Sheweth,

THAT your petitioner last Easter Vacation took out a commission to examine witnesses, wherein the defendant joined, but your petitioner was not able to execute the same during that Vacation.

That your petitioner is in hopes of doing the fame this Vacation; but one of the commissioners, (to wit) T. B. Esq; is engaged to be in London; whereupon your petitioner hath named the perfons subscribed in his room, but the defendant refuses to strike the said names in hopes of delaying your petitioner, and that the Vacation may be lost.

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to alter the commission, and that your Honour will be pleased to appoint, which of the two persons subscribed shall stand in his room, and that your petitioner may be at liberty to renew the faid commission, and to make the same returnable without delay.

And your petitioner shall ever pray, &c.

Petition to examine a defendant.

Between A. B. — — plaintiff, C. D. and E. F. defendants.

To the right bonourable, &c:

The bumble petition of the plaintiff,

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in be at THAT issue being joined in this cause, your petitioner is advised that the said defendant E. F. is a very material witness for your petitioner, and forasmuch as he is no way concerned in point of interest,

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to examine the said defendant E. F. at the examination of witnesses in this cause, as a witness for your petitioner, saving just exceptions.

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And your petitioner shall ever pray, &c;

Petition to add an interrogatory or two, but not to examine any witness already examined.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The humble pelition of the plaintiff,

Sheweth,

THAT your petitioner obtained an order for a commission to examine witnesses returnable—, and accordingly examined several witnesses, and returned his commission; but before publication passed, the defendant obtained an order for a commission to examine witnesses this Vacation; and your petitioner has joined and struck commissioners names for that purpose; but no notice is yet given of executing the said commission.

That your petitioner is advised it is necessary to add an interrogatory or two to his former set of

interrogatories.

Mailton C

Your petitioner therefore humbly prays your Honour, that he may be at liberty to add an interrogatory or two to his former set of interrogatories, but so as not to examine any witness that hath already been examined.

And your petitioner shall ever pray, &c.

Petition to enlarge publication.

Between A. B. complainant, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the plaintiff,

Sheweth,

THAT on the _____ instant a rule was entered by the defendant's clerk in court for passing publication in this cause; which rule is not yet expired.

That your petitioner has not yet been able to examine any witnesses, tho' he has several material witnesses, (as he is advised) to examine in this cause, without whose testimony he cannot safely proceed to a hearing.

Your petitioner therefore most humbly prays your Honour, that publication in this cause may be enlarged till the first day of the next Term.

And your petitioner shall ever pray, &c.

Petition to enlarge publication.

Between A. B. plaintiff, C. D. defendant.

To the right honourable, &c.

The bumble petition of the defendant,

Sheweth,

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ion

THAT a commission has been executed in this cause, and is returnable, since which the plaintiss hath given a rule to publish, but the same is not yet expired; and forasmuch as your petitioner

Petitions, [the forms of.]

petitioner hath several material witnesses to examine in this cause who live in and about the city of London;

Your petitioner therefore most humbly prays your Honour, that publication in this cause may be enlarged for a fortnight.

And your petitioner shall ever pray, &c.

Petition to enlarge publication.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c,

The bumble petition of the defendant.

THAT this cause being at issue, several with nesses have been examined on the part of the plaintiff, and this day being the—— day of a rule is entered by the plaintiff's clerk in court, for passing publication in this cause.

That by reason of your petitioner's and his Solicitor's illness, your petitioner has not been able to examine his witnesses this Vacation, altho' he hath several very material witnesses, (as he is advised) to examine; and in regard your petitioner hath no intention to postpone the setting down this cause for hearing,

Your petitioner therefore humbly prays your Honour, that publication in this cause may be enlarged for a month.

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And your petitioner shall ever pray, &c.

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Petition to enlarge publication, so as not to binder setting down the cause, and for an original and cross cause to come on together.

Between A. B. plaintiff, C. D. defendant. And the faid C. D. plaintiff, And the faid A. B. defendant.

To the right bonourable, &c.

The bumble petition of, &c.

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THAT these causes being at issue, commissions were taken out and executed, and witnesses examined thereupon in the last long Vacation.

That your petitioner (the plaintiff in the original cause) the twenty-first instant caused a rule to be given for passing publication in the original cause, but having several material witnesses (as he is advised) still to examine, and your petitioners having consented and agreed to the several matters contained in the prayer of this petition, your petitioners clerks in court having subscribed their names testifying such consent,

Your petitioners therefore most humbly pray your Honour, that publication may be enlarged in the original cause until the first general seal after this Term, and that publication may then pass in both causes, but not so as to hinder the plaintiff in the original cause from setting down the same Vol. I.

Petitions, [the forms of.]

for hearing this Term, and that the plaintiff in the cross cause may be at liberty to set down his cause to be heard at the same time.

And your petitioner shall ever pray, &c.

Petition to enlarge publication, and for a commission to examine, &c.

> Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c ..

The bumble petition of the defendant,

Sheweth,

THAT the plaintiff has given rules to produce witnesses, and to pass publication as of the last Term, but has not examined any witnesses.

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That your petitioner hath several very material witnesses (as he is advised) to examine in this cause, without whose testimony he cannot safely proceed to a hearing; and forasmuch as your petitioner lives in. Sc.

Your petitioner therefore most humbly prays your Honour, that publication in this cause may be enlarged until the first day the next Term, and that your petitioner may have a commission for examination of witnesses, and that the plaintist's clerk in court may join and strike commissioners names with your petitioner's clerk in court in four days after notice to the plaintist's clerk

clerk in court, or that, in default thereof, your petitioner may be at liberty to take out a commission this Vacation directed to his own commissioners.

And your petitioner shall ever pray, &c:

Petition to serve a subpoena to bear judgment on a clerk in court, defendant absconding.

Between A. B. — plaintiff, G. D. and others, defendants.

To the right bonourable, &c.

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ourt, tiff's clerk The bumble petition of the plaintiff,

Sheweth,

THAT your petitioner's cause being set down
to be heard on — day of — next ensung, and subpanas to hear judgment have been
issued and served on all the defendants, except the
defendant C. D. and the said defendant G. D. absconding and concealing himself, so that your petitioner is not able to serve him with a subpana to
hear judgment in this cause, as by the assidavit annexed appears;

Your petitioner therefore most humbly prays your Honour, that service of the said sub-pana to hear judgment on the said defendant C. D.'s clerk in court may be deemed good service on the said defendant.

And your petitioner shall ever pray, &c.

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Petition to prove an exhibit viva voce at the bearing.

Between A. B. plaintiff, C.D. defendant,

To the right bonourable, &c.

The bumble petition of the plaintiff,

Your petitioner therefore most humbly prays your Honour, that he may be at liberty at the hearing of this cause, to examine one or more witness or witnesses viva voce to prove the said bond.

And your petitioner shall ever pray, &c.

Petition that an answer taken in one cause may be read, and made use of at the bearing of another cause.

> Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the defendant,

HAT your petitioner having exhibited his bill in this honourable court against the not plaintiff, for a discovery of their right and title to

the feveral premisses in question in this cause, to which the now plaintiff put in his answer;

Your petitioner therefore most humbly prays your Honour, that he may be at liberty to read and make use of the now plaintiff's answer put into your petitioner's said bill at the hearing of this cause.

And your petitioner, &c.

Petition that depositions taken in one cause may be read and made use of at the bearing of another cause. A same in another translet

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the defendant.

Sheweth, The test is a second of the

THAT one Mr. H. I. a mortgagee of the premisses in question in this cause, having fome time heretofore exhibited his bill to foreclose in this honourable court against your petitioner and the now plaintiff, and iffue being thereupon joined, feveral witnesses were examined in the said cause.

Your petitioner therefore most humbly prays your Honour, that he may be at liberty, at the hearing of this cause, to read and make use of the depositions taken in the faid cause, faving all just exceptions.

And your petitioner shall ever pray, &c. this cause came on to be a

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Petition for leave to examine witnesses after jublication, upon the usual affidavit.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the plaintiff,

Shewesb.

THAT publication in this cause is passed, and the cause is set down for hearing before your Honour, but your petitioner having several material witnesses to examine, without whose evidence he cannot safely proceed to a hearing, and your petitioner, his clerk in court, and solicitor, having not seen or inspected the depositions taken in this cause, or otherwise published or caused to be published the same, as by the affidavit annexed appears;

Your petitioner therefore most humbly prays your Honour, that publication in this cause may be enlarged for a fortnight, and the

cause adjourned for that time.

And your petitioner shall ever pray, &c.

For the form of an affidavit to be annexed to this petition, vide affidavits.

Petition to set down a cause for rebearing on defendant's baving made default, and not appearing at the hearing.

to the plaintiff the costs of that day's attendance, whenever the plaintiff's clerk in court shall think fit to deliver your petitioner a bill of the same;

Your petitioner therefore most humbly prays your Honour, to appoint some shortday for the hearing of this cause as to your petitioner.

And your petitioner shall ever pray, &c.

Petition to set down a plea to be argued.

Between A. B. — — plaintiff, C. D. and others, defendants.

To the right honourable the Lord High Chancellor of Great Britain.

The bumble petition of the defendant C. D.

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THAT in—Term last the plaintiff filed his bill in this honourable court against your petitioner and others, fince which he has thought fit to amend the same.

That in——your petitioner put in his plea and answer to the said amended bill, which plea the plaintiff hath not yet set down to be argued.

Your petitioner therefore humbly prays your Lordship, that he may be at liberty to set down his plea to be argued; and that your Lordship would be pleased to appoint a day for the arguing thereof.

And your petitioner shall ever pray, &c.

K 4

Petition to set down exceptions to a Master's report.

Between A. B. plaintiff, C. D. defendant.

To, &c.

The bumble petition of the plaintiff,

annexed appears.

Your petitioner therefore most humbly prays your Lordship to appoint a short day for the arguing of the said exceptions.

And your petitioner shall ever pray, &c.

Petition to set down a cause for bearing.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &cc.

The bumble petition of the plaintiff,

Sbewerb.

THAT publication is by order, bearing date the day of to pass in this cause the first day of next Term; and your petitioner by the fame order is to procure the said cause to be set down to be heard some time within the said Term.

Honour, that this cause may be set down

in the paper of causes for the last day of causes within the next Term.

And your petitioner shall ever pray, &c.

Petition to appoint a short day for a farther bearing on a Master's report.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the defendant,

Sheweth.

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ur vn in THAT on the hearing of this cause on the day of 1767, it was ordered and decreed (as in the decree) and after the said Master should have made his report, such farther order should be made therein as should be just.

That in pursuance thereof the faid Master hath made his report bearing date the day of

last past in relation thereto.

Your petitioner therefore most humbly prays your Lordship to appoint a short day for the hearing of this cause on the said Ma-ster's report.

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A Print of the court defendance

Door English Salvana

bush at the revenue from the found

And your petitioner sball ever pray, &c.

Petition that fervice of an order nis on the clerks in court, may be good service.

Between A. B. — — — plaintiff, C. D. E. F. and G. H. defendants

To the right bonourable, &c.

The bumble petition of the plaintiff,

Sheweth.

Your petitioner therefore most humbly prays your Honour, that service of the said or der on the several clerks in court (who are concerned for the said several defendants in this cause,) may be deemed good service on the said several defendants.

And your petitioner shall ever pray, &c.

Petition to enter a decretal order nunc pro tunc.

> Between A. B. plaintiff, C. D. defendant,

To the right bonourable, &c.

The bumble petition of, &co. bearing dans rine 202

Sheweth, at all and and and the state of the state HAT upon the hearing of this cause the - day of ----- a decree was pronounced, which has fince been drawn up and passed by the Register; but the time for entring the same being elapfed by the rules of the court,

Your petitioner therefore humbly prays your Honour, that the faid decretal order may be entered nunc pro tunc.

And your petitioner Shall ever pray, &c.

M. Y.C. all their copies and in Specific Petition to fign and inrol a decree nunc pro das rice de la destrunc. portenances, transpared being to the rown of

Between A. B. plaintiff, as big sector chyord to a contract C. D. defendant in . contract

To the the right bonourable, &c.

The bumble petition of the plaintiff, either of their hears, executors

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HAT the time for figning and inrolling the decree in this cause is elapsed, according to the strict rules of the court.

Your petitioner therefore humbly prays your Honour, that he may be at liberty to fign and inrol the faid decree nunc pro tunc.

And your petitioner shall ever pray, &c; A petition A petition for an infant trustee to convey, pur. fuant to Stat. 7 Ann.

To the right bonourable, &c.

The bumble petition of M. C. widow and admini.

fratrix of J. C. Esq, deceased,

Sheweth,

HAT by indentures of lease and release bearing date the 26th and 27th days of July 1728, the faid indenture of release, being tripartie. and made between N. K. of the town and county of S. Merchant, of the first part, T. M. of the faid town and county, Merchant, and E. his wife of the fecond pare, and your petitioner's faid late husband by the name of J. C. of J. in the county of S. Efg; of the third part, reciting as in the faid indenture of release is recited, and for the consider rations therein mentioned, the faid N.K.H. M. and E. his wife did grant, release and convey unto the faid J. C. all that capital meffuage or mansionhouse, called or known by the name of B. H. o. with its rights, members and aptherwisepurtenances, fituate and being in the town of & aforesaid, to hold to the said F. C. his heirs and affigns, subject to a certain condition or proviso of redemption on the payment of the principal fum of one thousand pounds and interest, by the said s. M. and E his wife, or either of them, their or either of their heirs, executors, administrators or affigus, to the faid J. C. his heirs, executors, atministrators or assigns, on the day of December then next.

That the faid money was not paid according to the faid condition or proviso, and there now remain justly due and owing to the estate of the said J. C. upon the said mortgage, the principal sum of eight hundred ur-

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hundred pounds, with a confiderable arrear of in-

That the said J. C. the mortgagee is lately dead intestate, leaving J. C. his son and heir at law an infant, under the age of twenty-one years; and your petitioner being the widow of the said J. C. deceased, hath duly obtained letters of administration of his personal estate, and is thereby, amongst other things, become intitled to the principal money and interest now remaining due on the said mortgage.

That your petitioner is advised that the said J. C. the infant, is a trustee of the legal estate of the said mortgage; for the benefit of your petitioner, and enabled to convey within the intent and meaning of the statute made in the 7th year of the reign of her late Majesty Queen Anne, intitled, An ast to enable infants who are seised or possessed of estates in see in trust, or by way of mortgage, to make conveyances of such estates.

Your petitioner therefore humbly prays, that your Honour will be pleased to order the said F. C. the infant to convey his legal estate in the said mortgaged premisses to your petitioner, or as she shall direct; or that your Honour will make such other order for your petitioner's relief in the premisses, as to your Honour shall seem meet.

And your petitioner shall ever pray, &c.

8 Jan. 1778.

Let it be referred to a Master—to examine and certify whether this is a mortgage within the meaning of the said act, and how much is due, and to whom the mortgage money doth belong; and after the Master shall have made his report, such farther order shall be made as shall be just.

Petition

Petition for a person come of age to enlarge time for shewing cause against a decree.

> Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the defendant,

Sheweth,

HAT upon hearing this cause before your Honour the — day of — 1740, your petitioner being then an infant, it was (amongst other things) decreed, That in default of your petitioner's paying what should be certified due to the plaintist for principal, interest and costs on the mortgaged premisses in question, at such time and place as the Master should appoint, that then your petitioner might be absolutely foreclosed of all equity of redemption to the same, unless your petitioner (being the heir at law) upon service of a subpana for that purpose, should within six months, after he attains his age of twenty-one years, shew good cause to the contrary.

That your petitioner about three months fince attained his age of twenty-one years, and hath been

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ferved with a subpena accordingly.

That by reason of the Vacation your petitioner cannot apply to shew cause against the said decree (if he should be advised so to do) and for that the plaintiff cannot be a sufferer, being in possession of the premisses;

Your petitioner therefore most humbly prays your Honour, that he may have till the end of the next Term to shew cause against the said decree, and that in the mean time the said plaintiss may be stayed from making the said decree absolute against your petitioner.

And your petitioner, &c.

Petition to tax a solicitor's bill of costs.

To the right bonourable, &c.

The bumble petition of A. B.

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THAT your petitioner some time since employed one Mr. C. D. (one of the solicitors of this court) to prosecute, solicit and defend for your petitioner, diverse suits depending in this court, and several other matters, as your petitioner's at-

torney and folicitor.

That the said suits and matters being all long since concluded; your petitioner has often applied to the said Mr. D. to make out his bill of sees and disbursements, and to give your petitioner an account of what monies he had received of your petitioner for and on account of the same, and to give up and deliver to your petitioner all his deeds, papers, writings, books of account and vouchers, which he hath or ever had, belonging to your petitioner; your petitioner at the same time offering to pay and satisfy the said Mr. D. for what should appear to be justly due to him. But the said Mr. D. hath hitherto neglected to do the same.

Your petitioner therefore most humbly prays your Honour, that the said Mr. C. D. may be ordered to deliver to your petitioner his bill of sees and disbursements, and that the same

same may be referred to one of the Masten of this court to be taxed, and that the faid Mr. D. may be examined upon interrogatories, or account upon oath, as the Mafter shall think fit, as to all fums received or paid by or to the faid Mr. D. or to his use on account thereof, or touching any articles or charges in his faid bill, and that on payment of what (if any thing) shall appear due to the faid Mr. D. or in case he is overpaid, that he may refund and repay to your petititioner the overplus, and that he may be ordered to deliver to your petitioner upon oath, all deeds, papers, writings, books of account and vouchers, which he hath, or ever had, of or belonging to your petitioner; your petitioner hereby submitting to pay what shall appear due to the faid Mr. D. and that all proceedings against your petitioner may be stayed till the Master shall have made his report.

And your petitioner, &c.

Another of the like kind upon a bill delivered.

Between A. B. plaintiff, C. D. defendant.

To the right bonourable, &c.

The bumble petition of the plaintiff,

THAT your petitioner employed one Mr. G. H. (one of the folicitors of this conrt) to profecute and folicit this suit.

That

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That the said Mr. G. hath delivered a bill of sees and disbursements to your petitioner, which your petitioner conceives to be very extravagant; and the said Mr. G. H. threatens to sue your petitioner for the same, though your petitioner was always, and is still ready and willing, and hereby offers to pay the said Mr. G. his just sees and disbursements.

Your petitioner therefore most humbly prays your Honour, that it may be referred to one of the Masters of this court to tax the said Mr. G.'s bill, and that all proceedings at law against your petitioner may in the mean time be stayed.

And your petitioner shall ever pray, &c.

Petition that deposition may be opened, published, copied, and sealed up again,

Between J. C. plaintiff, and G.G. and H. H. defendants.

To, &c.

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Mr.

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That

The bumble petition of the plaintiff,

Sheweth,

THAT your petitioner filed his bill in this honourable court against said defendants, and obtained order to examine witnesses, de bene esse, and several were examined by commission in the country accordingly; and particularly one fames Haines was examined by your petitioner, and cross examined by defendant G.G. on such commission, which said fames Haines is since dead, and the said defendant having brought an action against Vol. I.

your petitioner for (fet out nature of allion) for the trial whereof at the fittings after this present Easter Term, in His Majesty's Court of King's Bench, for the city of London, notice is given.

Your petitioner therefore most humbly prays your Lordship, that the said commission may be opened by the clerks in court for plaintist and for defendant G. G. and that the deposition of the said James Haines, on his original and cross examination, may be published, copied, and examined; and then that said commission and depositions be closed and sealed up again by said clerks in court, under their hands and seals.

And your petitioner, &c.

28th April, 1778. Be it fo, being consented to by clerk in court for G. G. hereof give notice forthwith.

Batburft C.

I confent to the prayer of the above petition, if your Lordship thinks fit to order the same.

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Petition that serving writ of execution on clerk in court of absconding defendant may be good service on bim.

> Between A. B. plaintiff, C. D. defendant.

To, &c.

The bumble petition of the plaintiff,

Shewerb.

THAT by decretal order made on hearing this cause, it was referred to Master Ord, to take an account of all dealings and transactions between your petitioner and defendant; and that what the Master should find to be due on balance, should be paid accordingly.

That Master by his Report, dated _____, certified there was due from defendant to your petitioner, on balance of the aforesaid account, the sum of _____.

That, in order to enforce obedience to faid decree, on the _____ day of _____, your petitioner caused writ of execution of said decretal, and other orders, and Master's report, to be sealed; and from that time to this, hath used repeated endeavours to serve desendant therewith, but he

fo fecretes himself, that your petitioner hath not been able so to do; as by affidavit annexed appears.

Your petitioner therefore most humbly prays your Honour, that leaving copy of said writ of execution at defendant's house, together with service thereof on his clerk in court, may be deemed good service on said defendant.

And your petitioner, &c.

Petition to vacate recognizance of Receiver and bis Sureties.

Between M. C. plaintiff, W. R. and others, defendants.

To the right benourable the Master of the Rolls,

The bumble petition of C. B.

Sheweth,

THAT by order made in this cause 13th February last, it was referred to Master Ord to appoint a receiver of the rents and profits of the testator's real estate, and pursuant thereto, said Master appointed your petitioner receiver thereof.

That on 23d day of July, 1770, your petitioner, together with H. B. and L. C. entered into a recognizance to the right honourable the then Master of the Rolls, and Thomas Harris, Esq.; then one of the Masters of this court, in the sum of 500l. each, with condition for your petitioner's duly and annually accounting for what he should receive out of the rents and profits of the said estate, and answering

(wering and paying fame, according to the direction of the court.

That your petitioner hath paffed his account down to Lady-day last, and said Master hath by his report certified there then remained in your petitioner's hands, on the balance of his account, the fum of ----, which belonged to the defendant W. R.

That by an order made in this cause, 6th day of June last, it was ordered, that your petitioner should deliver to the defendant W. R. possession of fo much of testator's real estate as then remained unfold, and that he should pay to said W. R. the faid fum of _____, the balance remaining in your petitioner's hands, as aforesaid, and thereupon he was to be discharged from said receivership, and be at liberty to apply to court to have the recognizance entered into by him and his fureties, vacated.

That possession of said testator's real estate then remaining unfold, hath been accordingly delivered to faid W. R. and faid balance of so as aforesaid, reported to be in the hands of your petitioner, hath also been paid to said W. R. pursuant to faid order.

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Your petitioner therefore most humbly prays your Honour, that faid recognizance entered into by your petitioner and his faid fureties as aforefaid, may be vacated; and that the proper officer may attend your Hohour with the record of the faid recognizance for that purpose.

And your petitioner, &c.

La 2 Petition

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Petition for further adjourning cause.

Between D. W. plaintiff, C. M. his wife, and others, defendants.

To the right bonourable the Master of the Rolls.

The bumble petition of the plaintiff,

Sheweth,

HAT your petitioner having procured his cause to be set down to be heard before your Honour for Easter Term laft, your petitioner ferved all the defendants (except the defendant C. M.) with fubpanas to hear judgment, but the faid C. M. being a person very difficult to be met with, your petitioner could not serve him with subpana to hear judgment; and thereupon your petitioner obtained an order, bearing date 10th day of May last, to adjourn the cause to the 1st day of causes in Easter Term next; and accordingly your petitioner took out another subpana to hear judgment, 28th of this instant April, in hopes your petitioner should have been able to have served him therewith; but faid C. M. having no fettled place of abode, and being so very difficult to be met with, your petitioner hath not been able to ferve him with the last mentioned subpana although your petitioner hath used all possible means for that purpose; and in regard the adjourning this cause is in your petitioner's own delay, and same stands last in your Honour's paper for the day of causes in the ensuing Term.

> Your petitioner therefore most humbly prays your Honour that this cause may stand further

ther adjourned to the first day of causes in Trinity Term next.

And your petitioner, as in duty bound, spall ever pray, &c.

Petition for delivering up committee's bond, in order that the same may be cancelled.

In the matter of the late J. B. lunatic, deceased.

To the right honeurable the Lord High Chancellor of Great-Britain.

The humble petition of H.H. surviving executor of C.B. deceased, late committee of J.B. lunatic, deceased,

Shewet b.

THAT a commission of lunacy having issued against the said J. B. the lunatic, C. B. late of the city of B. merchant, his brother, was appointed committee of the said lunatic's person and estate.

That in the month of December 1777, the said J. B. the lunatic, departed this life a batchelor, leaving the said G. B. his brother, M. H. of the said city of B. widow, his sister, and your petitioner, and J. H. since married to J. F. the younger, of Clifton, in the county of Gloucester, Esq; the only children of J. H. then deceased, another sister of the said J. B. the lunatic, his only next of kin.

That the said J. B. the committee, after the decease of the said J. B. the lunatic, duly paid and discharged all the debts of the said lunatic then due; and accompted with the said M. H. and your L4 petitioner's

petitioner's said sister J. H. for the personal estate of the said J. B. the lunatic, and paid them their respective distributive shares of the said personal estate.

That your petitioner, the said M. H. and your petitioner's said sister J. H. did by deed poll, bearing date oth July, 1778, release the said C. B. his heirs, executors, and administrators, and also the real and personal estate of the said J. B. the lunatic, deceased, from all claims and demands on account of the said C. B. having acted in the management of the real and personal estate of the said lunatic, or which they the said M. H. your petitioner, and his said sister, then had or might have against the real and personal estate, for any matter, cause or thing relating thereto.

That the said C. B. the committee, departed this life some time in the month of Oxober last, having first duly made and published his last will and testament in writing, and thereof appointed your petitioner and T. D. of the said city of B. merchant, since also deceased, executors, who

have duly proved same.

That H. H. your petitioner's late father (one of the obligors in a certain bond entered into by the faid C. B. deceased, and J. H. of Westbury upon T. in the county of G. Esq.) is dead; and your petitioner is his eldest son and heir at law, and also sole executor named in the last will and testament of the said H. H. deceased.

Your petitioner therefore most humbly prays your Lordship, that the bond entered into by the said C. B. deceased, the committee of the said lunatic, and his sureties, may be delivered up to your petitioner, to be cancelled.

And your petitioner shall ever pray, &c.

Petition for a commission of sewers.

To the right honourable Henry Earl Bathurst, Lord High Chancellor of Great-Britain, and the Lord Chief Justices of both Benches at Westminster.

The bumble petition of several land-owners and occupiers of the western parts of the county of and limits berein after mentioned, whose names are bereunto subscribed, for and on the behalf of themselves, and the rest of the said land-owners, and occupiers within said western part.

Sheweth,

e

THAT the last commission of sewers, for the said western part and limits, and the borders and confines of the same, is now expired.

Your petitioner therefore most humbly prays your Lordships to grant a new commission of sewers, for the said western part, limits, borders and confines of the same, directed to the persons named in the list hereunto annexed, or to such others as to your Lordships shall seem meet.

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I	et a commission of sewers
	for the western parts of
***	the county of,
10	iffue, directed to the fe-
	veral persons in the list
. 6	here under named.

Batburst C. Mansfield, Wm. De Grey. 7. M. T. S.

J. F. J. H. W. F.

T. N.

N. B. Lord Chancellor's fecretary hath a fee of one guinea for procuring fame to be figured by his lordship; and each of the Chief's clerks half a guinea; the whole expence is about fifteen pounds.

Petition to Supersede commission of bankrupt.

- " In matter of Francis Gibbons bankrupt.
- of Great Britain.
- "The bumble petition of the said Francis Gibbons, "the bankrupt,

"Sheweth,
"The AT a commission of bankrupt, under
"the great seal of Great Britain, bearing
"date at Westminster, the — day of June,
1778, was awarded and issued against your petitioner, upon the petition of Charles Jones of, &c.
which commission was directed to certain commissioners therein specially named and authorized, the major part of whom found and declared
your petitioner bankrupt (a).

(b) Instead of this allegation, you may insert

the following one, viz. "That the feveral persons whose names are hereunto subscribed, are all the

" creditors

⁽a) And if the facts be so, you add here, " and executed an affign"ment of your petitioner's estate and essents to John Partridge and Charist
"Dennis, and your petitioner hath sinished his last examination before the
faid commissioners."

[&]quot;(b) That the said Charles Jones, the petitioning creditor, is the only creditor of your petitioner, who hath proved a debt under the said commission, as by the certificate of the said commissioners, hereunto annaximation, as by the certificate of the said commissioners, and as the said Charles Jones is consenting that the said commission should be superseded, and for that purpose hath signified his consent in writing to the prayer of this petition, at the foot hereof, as by affidavit also annexed, appears.

"Your petitioner therefore, &c. [as before.]

"claimed any debt under the faid commission, as by the (1) certificate if the faid commissioners,

(1) Certificate (a) of the commissioners to the great seal of the proceedings had under the commission, to supersede the same.

" In the matter of

" Erancis Gibbons,

" bankrupt.

"To the right honourable the lord high chancellor of Great Britain.

"We whose names are hereunto subscribed, being the " major part of the commissioners named and authorized in " and by a commission of bankrupt, bearing date at West-" minster, the day of June, 1778, awarded and " iffued against Francis Gibbons, of, &c. directed to us Tho-" mas Nugent, John Gastoigne Fensbawe, esquires, and John " Affon, gentleman, together with John Scot, esquire, and " Samuel Denison, gentleman, do humbly certify to your " lordship, that we the major part of the said commissioners on the said _____ day of June, having begun to put " the faid commission into execution, against the said Francis " Gibbons, did find, that the faid Francis Gibbons did, be-" forethe date and fuing forth of the faid commission, become " bankrupt within the intent and meaning of the feveral " flatutes made, and now in force, concerning bankrupts, " fome or one of them, and did therefore declare the faid " Francis Gibbons, bankrupt, accordingly. And we the faid " commissioners do further certify to your lordship, that " Charles Jones, John Partridge, John Leigh, John Merith, " James Welch, Charles Dennis, George Adams, Edward " Smith, Robert Bond, Charles Meriton, George Welp, Jonas " Strong, James Lally, Daniel Goodeer, Charles Church, " Lloyd, Peter Saintbull, are the only creditors of the " faid Francis Gibbons, who have proved debts under the " faid commission. And we the faid commissioners do fut-" ther humbly certify to your lordship, that we did meet " pursuant to notice in the London Gazette for that purpose, the day of the faid month of June, for the es proof

⁽a) To be engroffed as a treble fix-penny ftamped feet of paper.

Detitions, [the forms of.]

hereunto annexed, appears, and as all the faid " creditors of your petitioner are confenting that the faid commission should be superseded, and for that purpose have signified their consents in writce ing

proof of debts (a), and on the faid " month of June, for the choice of affignees (b) of the faid " bankrupt's estate and effects, when (c) no other creditor " proved or claimed any debt under the faid commission, at of ther of the faid fittings. Witness our hands this-

" day of July, in the year of our Lord 1778."

Thomas Nugent, John G. Fenshawi, John Acton.

Memorandum of the commissioners signing the about certificate.

At. &c.

" BE IT REMEMBERED, that we whose names are here-" unto subscribed, being the major part of the commissioners " named and authorized, in and by a commission of bank-" rupt awarded and iffued, and now in profecution against * Francis Gibbons, of, &c. met the day and year, and at the place abovesaid, and at the instance of all the said .. bankrupt's creditors under the said commission, made our " certificate, and thereby certified to the right honourable " the lord high chancellor of Great Britain, that we the " faid commissioners had declared the said Francis Gibbon, bankrupt, and that the faid Charles Jones, &c. [as before in of petition, were the only creditors who had proved or de claimed

(a) "When John James, James Benily, Mary Combs, &ce, proved debts under the faid commission;" if the fail be fo.

(b) "When John Partridge, of, &c and Charles Dennis, of, &c, wer duly chosen assignees of the estate and effects of your petitioner;

protes es debts under the faid commission :" if the fatt be fo.

(c) If the certificate be altered as in notes, this word " when" must be er and" to make it fenfe,

" ing to the prayer of this petition, at the foot
hereof, as by (1) affidavit also annexed ap- (1) Which
fee among
Pears.

Affidavita.

" Your petitioner therefore most humbly

" prays your Lordship would be pleased to order that the said commission of

" bankrupt awarded and iffued against

" your petitioner as aforefaid, be imme-

diately superseded, and that a writ of

" jupersedeas, do forthwith issue for that purpose, at your petitioner's (a) ex-

" pence.

id

at

it-

ng

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or at

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" And your petitioner shall ever pray, &c.

July, 1778. " Filing the

" certificate of the

" commissioners, and

" the affidavit of-

" be it as prayed.
" Bathurst C.

" (b) We whose names are hereunder written, do hereby most humbly testify and declare our

" consents to the prayer of this petition, in case "your Lordship shall be pleased to grant the same.

" Witness our hands this — day of July, 1778." (3dly) Of

(a) If the application to superfede the commission be from the missehaviour of the petitioning creditor, you may pray that the superfedes be at his expense.

(b) If there happens to be only one creditor, you say, "I the abovenamed Charles Jones, do, &c. [as above.]

John Scot, Samuel Denison.

[&]quot; claimed any debt, under the faid commission (a). Wit" ness our hands this——day of July, 1778."

Thomas Nugent,

⁽a) If any other proceedings were had, you must let them forth as in cor-

(3dly) Of Motions.

Motion is the request of a party, made ore te.

nus to the court by his counsel.

And a motion of course is, where by a standing rule, or the known course of the court, the thing requested is to be granted without hearing both fides: On these motions no + notice is necessary: nor will the court hear any defence against motions opposed, the of course; but the adverse party may move to set them afide, if the orders fo obtained be to his preit. Moseley judice, or obtained upon a false suggestion. note: most matters of course may be granted on petition as well as on moving the court.

Other motions there are, which would be also of course, if the facts alledged stood single by themfelves; but because there may be some other fact or circumstance in the case, locked up in the breast of the party, which the court cannot then fee, and fuch motion requested seems to be of an extraordinary nature; therefore in such cases the court usually grants fuch orders only nift, altho' there be notice

given.

There are likewise other motions which are not grounded on the general rules of the court, but are fometimes besides, or against it; and these are granted or denied according to the diffretion of the

court, after hearing counsel on both sides.

All motions made on extraordinary occasions are very rarely granted without notice; and generally in such cases an affidavit of the facts alledged must be read in court. And before any fuch motion is made, and not defended by the adverse party, an affidavit of notice must be filed, and a copy thereof produced under the hand of the Register of the Affidevit Office or his deputy, if you think you shall need

+ A motion of course cannot be notice is given of 255. pl. 147. need to prove your notice. And notices of motion must be in writing, and every thing the party moves for should be expressed therein; and they must be signed by the clerk in court, attorney or solicitor,

otherwise they are not good.

They must be served upon the adverse party, or, which is most usual, on his clerk in court; or delivered at his seat to his clerk or agent. And they are to be served two days before the motion be made; as if the motion is to be made on Thursday, the notice must be given at least on Tussday. But it is not good to serve a notice on Saturday, (but on Friday) to move on Monday; Sunday not being reckoned a day in such cases.

A notice of motion to receive money out of court must be served personally, on the adverse party, unless the court upon a former motion has ordered so many days notice to the clerk in court, as may be sufficient to send his client notice, and to have his answer; or if he be in the kingdom, but hard to be found, upon an affidavit thereof, such notice may be

ordered to be ferved on the clerk in court.

Motions may stand over to be heard another day where the court thinks fit. And if a notice of motion be given thrice and not moved, the party giving it shall not move the same notice a fourth time: But the adverse counsel, upon producing these four notices, may pray the court that the party may pay the costs of the three former notices before he moves the fourth notice; which the court generally orders: And if it be a matter of weight, and many counsel see'd, the court will order costs to be taxed by a Master.

In Term, every Tuesday, Thatsday, and Saturday, are days for sealing writs, except they be such Holidays when the court don't fit. And motions of course are usually made every day in Term at the rising of the court, after the causes are heard. But

every

every Thursday in Term is appointed by the court to hear motions in general; and no causes are heard that day: And so are the first and last days of the Term for motions only.

In the Vacation, only the feal days appointed by the Chancellor are days of motion; but the morning after Term, motions are made at the

Rolls.

And a notice of motion may be in this manner.

Between A. B. plaintiff, C. D. defendant.

In Chancery.

The defendant intends to move the court on Thursday next, [if in the Vacation you add "being the first General seal,"] or so soon after as counsel can be heard, that the time for redeeming the mortgaged premisses in question in this cause may be enlarged for three months, this being the—day of ——1778.

H. Solicitor for the defendant,

Notice to agent, as well as personal notice, will affect party. Vez. Rep. 48.

(4thly,) Of References.

A Reference is an order of the court, whereby divers matters, as exceptions, accounts, &c. are referred to a Master to examine, and make his reports therein; to the end that the court may make an order absolute, and determine such matters.

And sometimes Masters are impowered, by the order of reference, to determine the matters therein mentioned, as to tax costs and exceptions to an-

fwers:

fwers: But reports of the infufficiency of answers may be excepted to for the determination and opinion of the court.

References are generally made to one of the fit-

ting Masters,

No reference shall be made of the insufficiency of answer, without alledging the special causes in the exceptions. And a reference of the state of the cause is but rarely granted; except by consent of parties, and the special order of the court, where the court orders the Master to state such a matter of fact specially to the court.

And no reference shall be made upon a demurrer, or question touching the jurisdiction of the court; but such demurrer, &c. shall be heard and

determined by the court.

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After examination of witnesses, no reference is to be made to a Master to determine the matter, unless by the special order of the court, and by consent of the parties. Vide Toth. 47, 48. But a cause may, by consent, be referred to arbitrators; and their arbitration will be in nature of a report (which arbitration must be confirmed by the court like a report;) and fuch arbitration may be also excepted to, and those exceptions determined by the court. Upon hearing causes, all matters of account, and other matters (except in cases of very great weight) which are determined by the court, are generally referred to a Malter, with some directions how to proceed therein, and in making his report. And upon application to the court, by confent of parties, accounts may be examined into before hearing: But the common method now, is not to examine to a matter of account till after hearing, which is to be before a Master, if the witnesses be in town, &c. but if they are not, then by commission directed by the Master, upon an order. Vide Ord. Chan. 156. VOL. I. The The order of reference being produced and fhewn to the Master, or left at his office, at the request of the party, his clerk in court or folicitor, he issues a warrant appointing a time and place, usually his chambers, for the parties concerned to attend him; which being ferved on the adverse party's clerk in court by shewing it and delivering a copy; if he attends not, the Master will grant a fecond warrant, appointing a further day; and if he does not attend, a third warrant iffues, which is commonly called a peremptory warrant; and then not attending pursuant thereto, the Master, on oath of ferving the three warrants on the adverse clerk in court, or on his clerk or agent at his feat, will proceed and make his report ex parte, of that fide that attends and defires it. And parties may attend the Master with their counsel, clerk in court, or folicitor, or all of them, as they fee cause,

And generally where a matter of account is referred, before you form any charge, you take out a warrant to produce all books, papers, &c. which

is usually ordered by the decree.

Note; It is usual to underwrite all your warrants, to shew for what they are taken out, and upon what to be attended, as that The plaintiff has left his charge, and after the first warrant, To proceed on the plaintiff's charge, and the like; but the first warrant is seldom or never attended upon, by adverse party's solicitor or clerk in court, because they are in general not furnished with office copies of the proceedings left with Master.

And if the Master cannot go thro' with the matter referred to him upon the second warrant, you may take out a third, fourth, &c. and as many as

you please till he hath.

In proceedings before the Master upon accounts, or taxation of costs, vouchers are generally expected for such things as do not certainly appear

in themselves, or as a necessary consequence of some other thing already proved or certain, or where there is not a violent presumption, &t. Therefore 'tis adviseable to preserve all papers and writings whatsoever relating to the cause, which, if not admitted by the other side, must be proved, before the Master can allow them as evidence.

And if either party, by his counsel, clerk or solicitor, admits a matter of sact, the Master ought to make an entry thereof in his minute book, which the party admitting in his presence subscribes; and this is conclusive to such party, and the other side shall not be put to any proof of that matter. Vide Ord. Chan. 254.

Regularly no person is at liberty to object to or defend the proceeding before the Master upon any account, or taxing costs, but such of the parties as shall actually pay for an office-copy of such account or bill of costs from the Master.

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In matters of account where sums are forty shillings or under, then the party making an affidavit in writing before the Master (if the party lives in town, or if in the country, before a Master extraordinary) that such sums have actually been paid, they will be allowed by the Master on the party's own oath; but if such sums are above forty shillings, the party must examine witnesses before the Master, or by commission, to prove those sums paid, unless the other side will admit such sums to be paid.

A defendant having answered the bill cannot after refer it for scandal. 2 P. Will. 311.

After an order to refer an answer for insufficiency, tho' it cannot be referred for impersimence, yet it may for scandal. Ibid.

Bridgeman Ld. K. and Grimston Master of the Rolls, declared it as a rule and course of the court, on reference to a Master, to state an account upon

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a mortgage, That all money paid as furely shall be reckoned as principal money from the time of payment, and interest to be allowed accordingly: And secondly, If lands in see and for life be joined in mortgage, if the see be not sufficient at the time, the life shall be valued only as it was at the time, six or seven years purchase, and not according to the enjoyment since, be it twenty years or more. 2 Keble 376. pl. 31.

Note: In taxing the costs arising to the plaintist and defendant's solicitors on this business, they are allowed for all office-copies, and also 2 s. for the warrants each, and 2 s. for copy and service of each warrant, and 6 s. 8 d. for each attendance on the Master under a warrant,

If a matter of maintenance be referred to a Master on the hearing of a cause, the order of reference
must be drawn up, passed and entered, and a copy
served on the adverse party's solicitor or clerkin
court, afterwards you lay the order, and a state of
sacts or proposals for the allowance you would
have; stating the fortunes the infants are intitled
to, and the ordering part of the order before the
Master; then take out warrants, and serve on the
parties interested; on the last warrant attendance
Master at the time, and produce your warrants,
and proceed to state the case or oppose it (as the
case may be.)

How to underwrite thefe war-

1st Warrant.—The plaintiff bath lest a proposal for maintenance.

2d Warrant.—At which time I shall consider the plaintiff's proposal for maintenance.

3d Warrant.—At which time I shall allow the plaintiff's proposal for maintenance.

Note: If the father of the infant whose maintenance is settling before the Master be alive, an affidavit of his consent is necessary to be made and produced before the Master, but the same need not be filed.

(5thly) Of Reports.

A Report is a Master's certificate to the court, how the facts or matters referred by the court are, or do upon examination appear unto him, or of something which is his duty to inform

the court of.

Bill in infant's name by a relation, as prochein amy, to eall the mother to an account; on affidavit of several other relations, that this suit in the infant's name was out of pique, and not for the infant's good, the court referred it to a Master, who reporting the matter to be so, the suit was stayed. The Master's report, if not excepted to, must be taken to be true; and in case of exception to fact certified, the proof lies on the party; and he must at least falsify it by affidavit; for the there is no reason that the Master's report should be arbitrary and conclusive upon any one; yet it shall be presumed prima facie to be true, and turn it on the other side to shew the contrary. 3 P. Will. Rep. 140, 142.

No Master shall, on the importunity of counfel, or any other person, make a special report, unless required by the court to do so; or that his own judgment, with respect to difficulty, leads

him thereto. Ord. Chan. 144.

And by the same order, reports must be drawn as succinctly as may be (reserving the matter clearly M 3 for

for the judgment of the court) and without recital of the leveral points of the order of reference, or the debates of counsel; unless in cases where the Masters are doubtful, they briefly represent the reasons inducing them so to be.

Where a certain time was prefixed for making a report, and it was made after that time, it was disallowed. Vide Chan. Ca. 179. And generally, if the court by an order prefix a time, and the Master makes his report after that time, it is irre-

gular.

In proceedings before the Master, when he hath fully heard both parties, he prepares a draught of his report, and at the request of either party iffues a warrant, that the parties or some of them do again attend him; who have liberty to perufe fuch report, and take copies thereof, and after that, either party may again attend the Mafter, and take out a four-day warrant, (which is a warrent returnable in four days after date) and underwrite fuch warrant, At which time the Mafter foall fign bis report; which the Mafter accordingly will fign, unless either party do at that time bring in objections in writing to the draught of fuch report, and take out a warrant, giving notice that he has brought in objections to the draught of such report; and then the adverse party takes a copy of such objections from the Master; and either party may take out one or more warrants to be heard thereupon, and the Matter allows or difallows the objections, as he fees cause, and settles his report. Tho' after the Master hath made his report, either party may take exceptions to it, which must be argued in open court. But note: The party cannot regularly file exceptions to any report after the hearing, unless he first bring in objections to the draught of the report, and be heard before the Master thereupon; otherwise such party gives the count

court unnecessary trouble, and creates unnecessary expence to the other party in bringing exceptions to be determined by the court, which probably might have been determined before the Mafter, and allowed by him, on arguing before him the objections to the draught of his report, and very great inconveniences may arife, if this rule is not adhered to.

And these exceptions must be filed with the Regifter, at which time you pay him five pounds in order to answer the costs in case it is for delay or other frivolous matter, or your exceptions are overruled, and then you petition my Lord Chancellor for a day to fet them down, of which notice must be given to the other fide. by ferving a copy of the order on the clerk in court, and before the day of hearing, you must make his Lordship a copy of the report and exceptions, which you leave with my Lord's gentleman with five shillings.

And upon arguing the exceptions no evidence "Upon arwill be admitted in support thereof, but what was court whelaid before the Mafter, upon the objections. Prim ther papers role and Bramley, Mich. Vacation 1720.

were given in evidence

Mafter, Lord Chancellor Camden intimated that he would make an order for the Mafter to mark all papers allowed of in evidence before him. Mich. 1766.

Where a defective account is carried in before the Master, you should object to such defects, and that the same be made perfect before him, for the court will not afterwards make an order thereupon.

When the court by special order shall admit exceptions to any report, whereby money is reported due; after the time such exceptions should have been regularly filed, no proceedings on fuch report hall be stayed without giving fecurity to pay the money, or bringing it into court, unless the court shall provide otherwise by particular order. Ord. Chan. 203:

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Reports

Reports and certificates are to be filed with the Register in four days after signing; and he is to mark on the back the day of their receipt and filing. And all proceedings grounded on reports not so filed shall be void; and the Register's certificate of such neglect shall be good cause to discharge such proceedings, and for costs according to the discretion of the court. Ord. Chan. 237. But this rule of filing reports and certificates in four days is almost disused, and they are frequently filed afterwards.

I If plaintiff moves to confirm report nifi, and defendant fhews for cause. that he has taken exceptions ; plaintiff too may except to report, notwithflanding his motion. Mofeley, 305. pl.167.

On a report to ground a decree after it is signed by the Master, no order can be had to confirm it. till it be filed with the Register, and then an order is obtained to confirm the report, unless the adverse party being personally served with such order, shall in eight days after such service shew cause to the contrary; and then the other party has eight days from the service to except to it : But if the report be made before hearing, it needs no confirmation, but process may be taken out to enforce the performance, &c. without farther motion; unless the adverse party do in due time obtain some order of court to controul or fuspend the same. And such order of controul must be obtained immediately after such report is filed, either in Term, or during the General Seals after; but tho' the eight days be past, yet if it be but lately, the court will, upon motion, order exceptions to be received, and the party to procure a report in a short time. But no report after hearing is valid, unless it be confirmed by order of the court; which is confirmed by order unless cause as before: And if no cause is shewn against such report in eight days after personal service, then upon affidavit of such fervice, and taking the entering Register's certificate on fuch order (which certificate must be signed by any one of the Registers) that no cause is shewn against

against that order, then upon such affidavit and certificate on the said order, counsel moves of course to make such order absolute; and then the said re-

port is absolutely confirmed.

But where you cannot serve the order nist, perfonally, or where the defendants are numerous and live in different counties at a great distance from one another; on affidavit thereof, the court will make service on the clerk in court good. For an affidavit where the defendants live in different counties, and a petition that service on the clerks in court may be good, vide under the title of affidavits and petitions.

Upon a dismission with costs to be taxed by a Master, there needs no confirmation of his report, but a subpoena for costs, after the report siled, may be forthwith taken out: And if an answer be reported insufficient, one subpana for the costs, and another subpana to make a better answer returnable immediate, may be issued immediately; that for the costs must be served on the party personally; and that to make a better answer may be served on

the party's clerk in court.

A report being filed, the adverse party may give an authority to his counsel to consent that such report be absolutely consirmed: And such counsel consenting, the court will so order it: But without such consent the court will only order it to be consirmed, unless cause as before. And if, after a report is consirmed niss, a party obtains leave for the Master to review it (which is very rarely granted) he must pay such costs as the court shall think sit.

The court will but very seldom, and that in special cases, stir a report after it is confirmed, because the parties had sufficient time to except to it; much less will the court alter it without extraordinary and sufficient reasons, if it was confirmed by consent of parties.

Note;

Note; There is no occasion to serve a report. If the court orders an effate to be fold by the Master to the best purchaser that can be got, such purchaser, or some person authorised by him, must appear before the Master and subscribe his book, offering to give such a fum of money for the effate mentioned in the particular or abstract thereof left with the Mafter, upon fuch purchaser's having a good title made and executed to him thereof: And fuch purchaser must pay to the Master, or his clerk, for fuch subscription, two shillings and fixpence; and if no one bids more, the Master will grant a certificate or report of fuch purchaser's bidding such a sum of money for the estate; and no one bidding more, the Master allows him to be the best purchaser; which certificate or report being filed, the purchaser's counsel move to confirm it unless cause; and all parties concerned being perfonally ferved with fuch order, and no cause being Thewn in eight days after, as before; then upon affidavit and certificate, as before, counsel moves to make the order nift absolute: But if any of the parties be not fatisfied with fuch bidding, the court, on motion, will fend them back to the Master for a few days, to fee if a better purchaser can be found.

Where an answer is reported sufficient, the plaintiff is to pay the same costs to the defendant he would have been entitled to from the defendant, had the answer been reported by the Master insufficient. Vide Gilbert's Hist. and Prass. of the Court of Chancery, p. 103.

The exceptions filed to the Master's report must

be figned by counsel. Ibid.

If the Master reports the defendant's answer insufficient in one single exception, the defendant must either submit to answer, or except to the Master's report. Ibid. p. 104. If two or three exceptions are allowed by the court, they in general make him answer afterb. Ibid. p. 105.

A Master reported a submission by defendant to deliver plate, the defendant excepted to the report, insisting he made no such submission. Resolved, That the report must be deemed prima facie to be true. 3 P. Will. 142.

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'Tis sufficient that a Master's report be filed before any proceedings are had thereon, though not within four days after made, notwithstanding such order made by the Lords Commissioners, the 4th of W. & M. Vide 2 P. Will. Rep. 517.

A report made by a Master is as a judgment of the court.

It is not usual to confirm reports of receivers accounts. 2 P. Will. 661.

You cannot bring on the cause for the further directions of the court, or move, on a Master's report, till it is confirmed. Mosely 71.

Report for maintenance of an infant when made by the Master, should be immediately filed, and a petition must be presented by the solicitor to the Chancellor or Master of the Rolls, in order to confirm the same. A copy of the petition must be served three days before the day of hearing; the solicitor must prepare a brief of the petition, &c. and see counsel. He may in his petition either state the whole of the proceedings to the court, or only instructions, and so go on with the order of reference, and pray to have the report confirmed, and such allowance as mentioned in the report paid. At the hearing you must read to the court the office-copy or original report, when the court confirms such report.

Note: This report must be filed before you can draw up your order made on the petition to confirm the same.

The order, when drawn up, must be passed and enter.
ed at the register as a common order, and a copy of
copies served on the party or parties.

Of references and reports.

HERE the Master reports any irregularity, there may be a reference, but no exceptions; for these matters used to be decided by the Six clerks, and less credit is not to be given the Master.

On filing the report and 5 l. paid in, on certificate from the Register, the court, on motion, will order to stay proceedings till the hearing thereof.

For a report before hearing you pay the Master 15s. and after hearing 1l. 5s.

Exceptions to a Master's report.

Between, &c.

In Chancery.

PACEPTIONS taken by, &c. to the report made the ——day of —— by Mr.

H. one of the Masters of this court, concerning
the insufficiency of the defendant's answer.

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The said exception saith, that the said Master having made his report against the desendant's answer as insufficient, in that the said desendant hath not in his said answer set forth, &c. and whether he did not, &c. required by the plaintists bill: Now he excepteth against the said report, for smuch as the said answer is full and sufficient, notwithstanding the said Master's report, there being no occasion, according to the practice of the court, to set forth the same in the said answer, as this exceptant

is of opinion, and submits to the judgment of the

For which reason this exceptant prays, that the report may be set aside, and the answer adjudged sufficient

A report of the arrears of an annuity.

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Between A. B. — — — plaintiff, C. D. executor of E. F. et al' defendants.

March 3, 1743. IN pursuance of the order made on the hearing of this cause, bearing date the tenth day of December last, I have been attended by the solicitor for the plaintiff, and the defendant C.D. (no person attending for the other defendants, although duly fummoned, as by oath made before me appeared) and I have, in the presence of the parties so attending me, proceeded to take an account of what was in arrear for the annuity, or yearly rent-charge, of twenty pounds a year in question in this cause, during the time the said E.F. the testator, was in possession of theestate mentioned in the pleadings of this cause; and I do find, that in the month of Offober 1734, G.H. brother of 7.K. who was the eldest son of L.M. Nephew of N.O. in the pleadings of this cause named, died without iffue male; and that on the death of the faid G. H. the faid annuity of twenty pounds a year vested in the said plaintiff A. B. by the will and codicil of the faid N.O. And I do find, that on the death of the faid G. H. the faid testator E.F. was then in the full and absolute possession of the trust estate of the said N.O. charged therewith, and so continued till the month of April 1738. And I further find, that on the first day of Februery 1734, there became due to the faid plaintiff A.B. for

for half a year of the faid annuity, the fum of 10! and that during the time the faid testator continued in the possession of the said estate as aforesaid, the faid plaintiff A. B. became invitled to three years more of the said annuity, viz. for one year due the first of February 1735. the sum of 201. for another year due the first of February 1736. the sum of 201. and for another year due the first of February 1737. the fum of 201, which together with the faid fumuf 10 1. make together the fum of 70 1. but it being directed, by the faid order, that I should deduct the taxes out of the faid annuity according to the rate the lands, whereout the same doth iffue, have paid to the land-tax; I find, that the faid lands have been rated but as a moiety of the land-tax as allowed by the acts of Parliament for these years: I have therefore, in the schedule to this my report annexed, stated the rules of the land-tax as allowed by Parliament, for the faid years, and what is to be deducted out of the faid annuity according as the faid lands were yearly rated, and the same in the whole amounts to 61. which I have deducted from the faid fum of 70% whereby the same is reduced to the fum of 64%, for which fum I have, according to the directions of the faid order, computed interest from the filing of the plaintiff's bill which was on the fourth of November 1742. to the twenty-third day of March instant, being one year, four months and nineteen days after the rate of 4 %, per cent. per annum, and the same amounts to the sum of 34 12 s. o'd, which being added to the faid fum of 64. make together the furn of 671. 125. o'd. and which faid fum of 671, 125, old. I do appoint the faid defendant C. D. to pay unto the plaintiff A. B. on the faid twenty-third day of March instant, at the Chapel of the Rolls in Chantery-Lane, between the hours of ten and twelve of the clock in the forenoon d

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of the same day. All which I humbly certify and submit to the judgment of this honourable court. T.W.

The schedule to which my report refers.

10 30 Tag 1 4. First out of the half year's annuitydue the first of February 1734. which that year was 2 s. in the pound, to be deducted one moiety of the land-tax,

Also out of one year's annuity due the first day of February 1735. which that year was 3s. in the pound, to be deducted one moiety of the land-tax, which amounts to

Also out of one year's annuity duethe first of Februrry 1736. which that year was 4 s. in the pound, to be deducted one moiety of the land-tax, which amounts to

Also out of one year's annuity due the first of February 1737. which that year was 43. in the pound, to be de- 2 00 00 ducted one moiety of the land-tax, which amounts to targanus of the first effore, for

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A report of passing a receiver's account.

Between A. B. plaintiff, C. D. defendant.

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June 23, 1744.

IN pursuance of the order made upon the hearing of this cause the twenty-sixth day of November 1734, and of a subsequent order of the ninth day of May 1735. I have been attended by E. F. receiver of the rents and profits of those parts of the estates in question in this cause, which lie in T. in the county of W. and by the folicitors for the parties, and the faid receiver having brought before me an account of the rents and profits of the faid effate, and of his payments and allowances thereout for taxes and repairs for one year ending at Lady-day 1743. which account containing likewife a rental of the said estate, is contained in one sheet of paper marked with the letter (H), which now remains with me ready to be produced as this court shall direct. I have in the presence of the said receiver, as also in the presence of the folicitors for the plaintiff and defendant, proceeded to take the faid account. And I find, that the faid receiver hath received, by and out of the said rents and profits for that year, the feveral fums of money contained in the fourth column of the faid account intitled (money received) amounting together to the fum of 465 l. 113. 2 d. and that he hath allowed to several tenants of the said estate, for taxes and repairs, the feveral fums contained in the second and third columns of the faid account intitled (allowances) and (land-tax) amounting together to the fam of 851. 5s. 2d. of which I have made him an allowance; and which being added to the faid fum of 465l. 114 2 d. received as aforesaid, makes the sum of 550 h 16

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16s. 4 d. which is the amount of the rental of the faid estate, for the faid year, as appears by the first column of the faid account (intitled yearly rents;) and I do not find, that there are any arrears of rent of the faid estate standing out unreceived, fave those mentioned in the first schedule to my report dated 12 June 1740. All which arrears are of a long standing and deemed desperate. And I find, that over and above the allowances therein beforementioned to have been made to the faid receiver, he hath paid, and is to be allowed for rent and quitrent issuing and payable out of the faid estate for his falary, as receiver, and charges of passing his accounts, the feveral fums of money mentioned, and fet forth in the schedule to this my report annexed, amounting together to the fum of 42 l. 7 s. 8 d. which being deducted out of the faid fum of 465 l. 11 s. 2 d. reduces the same to the sum of 4231. 3 s. And I find, by my report made in this cause the twenty-fourth day of June 1742, that upon the foot of the said receiver's account to Lady-day 1741. therein stated and allowed, there remained in his hands a clear balance of 347 l. 10 s. 1 d. which being added to the faid fum of 423 l. 3 s. 6 d. makes the sum of 7701. 135. 7 d. which is the clear balance remaining in the faid receiver's hands upon the foot of his account to and at Lady-day 1742. All which I humbly certify and submit to this honourable court.

T.W.

The schedule mentioned in, and referred unto by the foregoing report, containing an account of allow-ances craved and made by E. F. the receiver for several payments by him made (over and hesides the allowances to tenants) and otherwise.

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Paid a year's quit-rent to N.O. Efq. ? for part of the faid premisses due at La-

dy-day 1742.

Paid a year's quit-rent to P. Q. for other part of the faid premisses 1 .-- s .-- d. after deducting taxes due at Ladyday 1742.

Allowed the receiver for one year's ?

falary due Lady-day 1742.

Allowed ditto for charges of paffing } this account.

T. W.

Note; Upon having an order to appoint a receiver, you take out a warrant, underwriting that fuch a one, mentioning where he lives, is to be approved of by the Master to be receiver, and that fuch, and fuch a one, naming two persons, mentioning where they live, are to be his fecurity; for all receivers must enter into a recognizance with two securities before the Master to account regularly.

A Receiver appointed by the court, is an officer of the court, and need not be served with a writ of execution of a decretal order, but only with a copy of the order, and if he disobeys it, he shall be committed. Moseley 40.

[For cases relating to a receiver, see 2 Abr. Eq.

p. 691.]

A report of principal, interest and costs upon a mortgage.

whole the fum of \$141 61 o'd due to the

Between A. B. plaintiff, C. D. defendant.

February 9, 1744 some of the Line of the sand

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IN pursuance of the order made on the hearing of this cause, bearing date the tenth day of October 1744. I have been attended by the folicitors for all parties; and in their presence, I have considered of the matters thereby to me referred. And I have proceeded to take an account of what is due to the plaintiff for principal and interest on his mortgage on the premittes in question in this cause. And I find, that there is due to the faid plaintiff, on his mortgage bearing date the eighth day of October 1736, the principal fum of 600 l. And I have computed interest for the said principal sum of 6001. after the rate of 51. per cent. per ann. from the faid 18th day of October 1736, to the third day of September 1744, being fix months after the date of this report; and the same being for seven years, nine months and forty-seven days, amounts to the sum of 236 l. 7 s. 3 d. whereout being deducted the fum of 90 l. which I find the faid plaintiff hath received on account of interest on his said mortgage, there remains the fum of 1461, 7 s. 3 d. which being added to the faid fum of 600 l. make together the fum of 746 l. 7 s. 3 d. due to the said plaintiff for principal and interest on his said mortgage on the same third day of September next. And I have considered of the faid plaintiff's bill of costs, amounting to the sum of 861. 5s. 6d. which I have moderated and taxed at the sum of 971. 19s. 6d. which being added to the faid fum of 7461. 7 s. 3 d. make in the whole N 2

whole the fum of 8141.6 s. 9 d. due to the faid plaintiff for principal, interest and costs on his faid mortgage, on the faid third day of September next; and which faid fum of 8141. 6 s. od. I do appoint the defendant to pay to the faid plaintiff on the faid third day of September next between the hours of ten and twelve of the clock in the forenoon of the fame day, at the Chapel of the Rolls in Chancery. All which I humbly certify to this honourable court.

If a mortgagor is apprehensive that the estate is worth more than the money reported due, and wants time to raise money to pay off the mortgage, the court, upon application, and an affidavit of the value, will usually enlarge the time to redeem for fix months, and refer it back to the Master to tax the fubsequent costs, and carry on the subsequent account: And upon further application will enlarge the time for three months, which upon extraordinary occasions the court will order peremptory, and for the mortgagor to fign the Register's book that

he will not crave any further time,

whole

But in these cases the court has a discretionary power, and always act according to the circumflances of the case; for if the estate is worth a good deal more than the money reported due, they will not let a mortgagor be foreclosed immediately, but give him all reasonable opportunities to redeem, where it is not an apparent intent of delay. And even after the time appointed for payment, the court will, at any time before the mortgagee has obtained an order to foreclose, give the mortgagor a time; but all applications for time to redeem should regularly be made before the time appointed is expired. to the had form of had

But if a mortgagor cannot make more of his estate, but will let it go, the mortgagee must after the expiration of the six months apply to the court for an absolute order to redeem, which must be upon an assidavit of the mortgagee's attending at the time and place mentioned in the report, and at the same time producing and reading to the court the decree, and all proceedings thereupon; and note, that this is a motion of course.

For the form of this affidavit, vide p.

None but the mortgagee, or the person appointed by the report, can receive the money reported due, unless they be appointed by letter of attorney under his hand and seal. And then the person appointed, if the money is not paid, makes an affidavit thereof, and then you proceed as before.

The form of a letter of attorney to receive money reported due at the time appointed by a Master's report.

NO all to whom these presents shall come, A. B. of, &c. fendeth greeting. Whereas T. W. Eig; one of the Masters of the high court of Chancery, by his report bearing date on or about the third day of March last past, and made in a certain cause depending in the said court, wherein the said A. B. is plaintiff, and C. D. is defendant, certified, that in pursuance of an order made on the hearing of the faid cause, bearing date the nineteenth day of February 1742. he had been attended by the folicitors for all parties, and in their prefence had confidered of the matters thereby to him referred, and had proceeded to take an account of what was due to the plaintiff for principal and interest on his mortgage on the premisses in question in the said cause, and to tax him his cofts of the faid fuit; and found

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that

that the fum of 814 6 16 5, 9 d. would be due to the plaintiff for principal, interest and costs on his faid mortgage on the third day of September next; and which faid fum of 814 1. 16 s. od. the faid Mafter thereby appointed the faid defendant to pay to the faid plaintiff on the faid third day of September next at the Chapel of the Rolls in Chancery-Lane, London, between the hours of eleven and twelve of the clock in the forenoon of the same day: As in and by the faid in part recited report, relation being thereunto had, may more fully and at large appear: Now know ye, that I the faid A. B. have made, ordained. construted and appointed, and by these presents. Do make, ordain, conflitute and appoint E. F. of. Grand G. H. of, &c. my true and lawful attorney and attornies, jointly and severally, hereby giving and granting full power and authority, for them my faid attornies, or either of them, to attend at the faid Chapel of the Rolls according to the faid report, and for me, and in my name, and to my use, to alk, demand, and receive of and from the faid C. D. the faid fum of 8141.65. 9d. And upon the payment of the faid fum of 8141. 6s. od. or any part thereof, receipts, acquittances, and other proper discharges in the name of me the said A. B. to make and give for the same, and to deliver, and furrender up the faid mortgage fecurity, and all other my fecurity and fecurities for the fame, and generally to do and transact and other act, matter or thing for the obtaining and receiving the same fum of 8141. 6 s. 9 d., to the use of me the said A. B. as fully as I myself could or might do, if I was personally present: I the said A.B. hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatfoever my faid attornies, or either of them, jointly or feverally shall lawfully do, or cause to be done, in and about the premisses, by virtue of these presents. In witness 1882

hand and seal this — day of — in the eighth year of the reign of our sovereign Lord George the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth, and in the year of our Lord 1778.

Sealed and delivered (being first duly stampt) in the presence of

(6thly) Of Certificates.

A Certificate generally is a matter in writing under the hand or hands of Masters, Officers or Ministers of the court, informing the court of something under their respective administrations, or cognizance, that is done, not done, or mis-done; which an order or mandate of the courts or their duty, or the reason of the thing requires them to acquaint the court with.

These certificates the court gives much * credit • The Mato, especially from the Masters and standing offied that writed that writed that writed that writengs were

ed in; the Clerk offered to prove they were delivered in, but the Court would not fuffer averment against the Master's certificate. Sel. Cas. in Chanc. 5.

In the caption of answers taken in the country (which is a certificate of the commissioners) the town and county where, and the day and year when the answer is sworn by the defendant, ought to be inserted, otherwise the answer may be suppressed: So also in the caption of assidavits, depositions, &cc.

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The certificate of commissioners of any thing touching the execution of their commission, need not be filed before admitted to be read, or made use of.

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As touching all matters relating to irregularities in mere matters of practice of the court; the court, on motion or petition, usually orders such matters to be referred to the two senior Six clerks, not in the cause, to certify whether such proceeding or process be regular or not; and according to their certificate the parties are to abide; and such certificate cannot be excepted to without particular leave of the court, which is very rarely granted.

After an answer is filed, and no proceedings in the cause for three Terms after, you then acquaint the plaintiff's clerk in court, usually by leaving a note in writing with him (which is a mere matter of favour, and not strictly obligatory) that you must dismiss the bill for want of prosecution: And if he don't file a replication to the defendant's answer in two or three days after fuch notice given, which is the usual way to prevent a bill from being-dismissed, you then get the Six clerk's certificate the day the defendant's answer was filed, fince which the plaintiff bath not replied, nor further proceeded in the cause, as appears by bis book. And upon this cenificate you then get counsel to move to difmis the plaintiff's bill with cofts to be taxed by a Mafter, which is a motion of course; and having drawn up and entered your order, you carry it to the Master to whom it is referred, with your bill of costs, which you leave with the Master, who gives you a warrant to ferve on the plaintiff's clerk; and underneath the warrant write, the defendant bath left a bill of coffs; and on the return of the faid warrant, you take out a fecond warrant, and fometimes a third; and if no one attends on the other fide, upon producing the warrants, and making oath of the service thereof on the plaintiff's clerk before the Master, he taxes the costs ex parte, and figns a report for the fame, which you must file, and take out a subpena for these cofts 13

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costs from the Subpana-office; which fubpana must be ferved personally on the plaintiff, and the cofts demanded of him, which if he refules to pay, you make an affidavit of the fervice of the subpana, and of your demanding the sum of money of him, and his refusal to pay : And upon filing the affidavit, and having an office-copy thereof. you carry it to the defendant's clerk in court, and he makes you an attachment directed to the Sheriff. to arrest the plainiff for non-payment of those cofts; which being done, and the plaintiff refufing to pay those costs, and also the costs of the arrest (which is ten shillings and fix-pence) he is carried to the county goal, where he must lie till he has paid those costs: But if the plaintiff absconds, and cannot be found perfonally to be ferved with fuch subpana, upon affidavit thereof, the court will. upon motion or petition, order that fervice of fuch subpana on the plaintiff's clerk in court shall be deemed good fervice; and upon fuch fubpana being ferved on the plaintiff's clerk in court, and the cofts demanded of him, and his refusal to pay the costs. then, upon making and filing your affidavit thereof, an attachment is made against the plaintiff for those costs, as before; and upon a return by the Sheriff of a Non est inventus against the plaintiff, a proclamation iffues against the plaintiff; and upon the like return thereof, a commission of rebellion directed to commissioners; and upon their like return. an order for a Serjeant at arms iffues against the plaintiff; and upon his like return, and certificate, you then obtain an order for a sequestration, directed to commissioners to sequester the plaintist's real and personal estate, until he shall have paid those costs. and the court make other order to the contrary; and the plaintiff cannot discharge the sequestration until he has paid not only those costs, but also all the subsequent costs to be taxed by a Master.

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Note; When process is thus carried on by way of Non est inventus, there must be fifteen days be tween the teste and return of each process; but if you arrest the plaintist on such process, there is no occasion for fifteen days between the teste and return: And this rule holds good of all such process that is made against the defendant for want of his answer.

If the plaintiff files a replication to the defendant's answer, and proceeds no further in three Terms after the replication filed, you then get the Six clerk's certificate thereof, and give notice in writing to the plaintiff's clerk in court to move that the plaintiff's bill may be dismissed out of court, with costs, to be taxed by a Master; And upon making an affidavit of serving such notice, and producing such certificate, your counsel moves to dismiss the bill with costs, to be taxed by a Master; which is always granted, unless the plaintiff's counsel shews some very urgent and sufficient reason to the contrary; and in such case the court will order the plaintiff to speed his cause to a hearing.

As foon as publication is passed in the cause, the plaintiff gets his Six clerk's certificate, that the pleadings in the cause are regularly filed, and publication passed, and he has seen the depositions; and upon fuch certificate you get the cause set down in court, or at the Rolls either by the Six clerk, or by one of the Secretaries, or by the Register, and the Register will give you a certificate thereof, which certificate and precipe for a subpana you carry to the Subpana-office, where they will make you out a subpana to hear judgment, which you mult ferve on the defendant (if he lives above ten miles in the country) fourteen days before the return thereof; and ten days on the defendant before the return, if he lives in London, or within ten miles thereof; unless it be between Easter and Trining Terms,

Terms, when by reason of the shortness of that Vacation, ten days is held good for the service of such subpoena on the former, and eight days on the atter, between fuch fervice and return.

Where a matter of account or other thing is referred to the Master, and you think it will be necessary, and indeed upon matters of account it s usual to let alone examining the witnesses till after the hearing, and it comes before the Mafter. to examine witnesses with regard thereto, the Mafter upon request will grant a certificate for a commission, upon which you apply to the court for the same, the absent not bettim moo mid yo

Or where interrogatories are exhibited for examination of any of the parties, or warrants are taken out to produce or do any other matter ordered by the court, who stands out till the expiration of the third warrant, or where any witness, upon being served with a subpoena to testify, does not attend and put in his examination, the Master or examiner will grant a certificate, and thereupon you may apply to the court that they may fland committed for a contempt.

If a defendant submits to a decree nifi, then on affdavit of the service of the subpoena to shew cause. and the register's certificate that no cause is shewn. the plaintiff's counsel move to make the last order absolute, on offidavit and certificate, which is a motion of course. Vide Gilbert's Hift. and Pratt. of no further proceeding, as appears

this being the -day of -----

Chan. p. 156.

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A certificate of a defendant's not attending h

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Al Historia de Between M. B. plaintiff, or han

C. D. defendant.

tories were exhibited in my office, by the complainant in this cause for the examination of the defendant touching a contempt supposed to be by him committed for breach of an injunction obtained in this cause, since which time the said defendant thath not attended to be examined there upon. Dated this day of 1744.

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A Six clerk's certificate of an unfwer being filed, and no proceedings since, in order he distinis a bill.

Between A. B. plaintiff, C. D, defendant.

THESE are to certify, that the defendants answer to the plaintiff's bill was filed the day of 1743. Since which there has been no further proceeding, as appears by my book; this being the day of 1744.

A Six clerk's certificate of no proceeding after replication.

Between A. B. plaintiff, C. D. defendant:

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THESE are to certify, that the defendant's answer to the plaintiff's bill was filed the day of—1742. to which the plaintiff reblied the—day of—1743. Since which there hath been no further proceeding, as appears by my book dated this—day of—1744.

A Six clerk's certificate of pleadings being filed in order to set down a cause for bearing.

> Between A. B. plaintiff, C. D. defendant.

HESE are to certify that plaintiff's bill, and the defendant's answer, and the plaintiff's replication to the defendant's answer, are duly filed, as appears by my book. And I have seen the depositions published, dated this——day of——1744.

The like certificate in order to fet down a cause upon bill and answer.

Between A. B. plaintiff, C. D. defendant.

THESE are to certify, that the plaintiff's bill and the defendant's answer, are duly filed, as appears by my book, this being the day of

(7thly)

(thly) Of Orders.

TNDER this head, I don't defign to treat of the general and standing orders, nor of such orders, as are made on hearings; but the orders here intended, are chiefly interlocutory orders, such as are antecedent to the decree.

And here we may observe, that there are many occasions intervening in a cause which require mo. tions or petitions to fet them right; now fuch directions as are given by the court on fuch motions or petitions, are commonly called interlocutory or ders; and those orders are of several kinds, and are either of course, or special: Sometimes they relate to the profecuting or carrying on of a caule, and sometimes they are touching process, &c. At other times they are founded on the standing orders of the court, and upon the particular circumstances of the case, and are made upon the application of some person, either plaintiff or defendant, interest. ed in, or affected by the cause. When they are made upon hearing counsel on both sides, regardis always had to the general rules of the court; but when they are made by consent of parties, they are often out of the general rules, or course of the court; in which cases the special reasons, moving the court to vary from those rules, are always expreffed in fuch order.

All orders must be pronounced in court, and drawn up by the then sitting Register, from his minutes taken in court; of which minutes the clerk in court, or solicitor of each side, may take a copy from the Register, in order to be informed of any thing that is special therein. And is special cases any difficulty or doubt arises in the minutes, the parties may attend the Register, about explaining

explaining them; and if by this means they cannot be settled to the satisfaction of both parties, the court may be applied to, either by motion or petition, but usually by petition, to explain or amend them; and the court will order the Register, and all parties to attend therein; when they attend by their counsel; And the court then makes such order about rectifying the minutes as they shall see cause.

But with respect to orders of course or such orders as are not in special cases, there is no occasion

to take a copy of the minutes, &c.

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If you want an order drawn up upon a petition, you need only go to any one of the Registers for that purpose, and with him leave the petition: And if the order be obtained upon motion, then you may leave a brief with him, or other proper instructions, and from those and his minutes he draws the order, and after you have looked it over. and feen that it is right, you must return it to be passed (i.e. to have his hand or (1) mark to it) which being done, you must leave it with one of the entering Registers to be entered; after which, and not before, you may regularly ferve it on the other fide; for all orders must be passed and entered before allowed or ferved: And if either party expects any use or benefit by an order, it must be first drawn up, &c.

The Register is to take down all minutes truly; and in special cases, and upon hearings, they are usually, so soon as pronounced, read over in court by the Register: And if the Register draw up and pass any order contrary to the directions of the court, (which very rarely happens) the Lord Chancellor, or Master of the Rolls, who made the order, will upon motion or petition appoint a day for both

fides:

⁽¹⁾ That is his private mark, for it does not mean a prefumption that Repifer cannot write.

fides to attend, with the Register to set it right: And if it be in the Vacation, and requires expedition, application may be made by petition.

Where any subsequent order is obtained, and a former order material for the court to take notice of is concealed, or not truly and fairly represented, no benefit shall be taken of the subsequent order; but the court, upon motion, will either set aside, or alter the same, as obtained surreptitiously: And therefore the Register, in drawing up such orders, always mentions the next precedent order, in which great care ought to be taken that it be fully and truly recited, lest a mistake therein should vitiate the order.

After orders are entered, they may not only be altered but even discharged on good cause, by special direction of the court. And when a party moves to discharge an order, he must have it

drawn up ready to produce to the court.

If counsel move in the morning to make an order nist absolute, it is commonly granted, provided cause be not shewn before the rising of the court; for the party has all the day during the sitting of the court, to shew cause: And an affidavit of duly serving the order nist, is requisite on such motion; and without a motion and affidavit such order is not absolute, although no cause be shewn, unless it be expressly so ordered: Moreover, if you move not to make such order nist absolute till after the day given to shew cause, you must then not only produce the affidavit of the service of the order, but also a certificate from the Register, that no cause is shewn to the contrary; and then, if upon moving no cause is shewn, the court makes it absolute.

Where an order is made upon hearing counsel of both fides, there is no occasion to serve it. Mosely

his private maily, for it loss and mean a preficient a

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By the Stat. 9 W. 3. cap. 15. a submission to an award may be made an order of this court.

The usual way of serving an order, is to shew it to the clerk in court, or his clerk or agent, on the other fide; and at the fame time to deliver him a true copy thereof, or to leave a copy with the clerk in court, his clerk or agent, at his feat in the office, at the same time shewing him the original order duly passed and entered: But till the order in some special cases, i. e. a writ of execution of such order, under feal, be personally served, the party is not brought into contempt, nor to be committed for disobedience; though in the case of an order made against a solicitor, or officer of the court, it hath been held to be otherwise, and the bare service of the order deemed to be good; because he is supposed to be present, and to know what passes in court.

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A party may be committed for not obeying an order personally served; as if there be an order against a solicitor to bring his bill before a Master to have the same taxed, and he refuses to bring such bill before the Master, then, upon the Master's certificate that he hath not brought such bill, and on an affidavit that such solicitor hath been personally served with a true copy of such order, the court; on motion, will commit such solicitor.

And as to disobedience to orders, the doing a thing against which there is an injunction is always looked upon as a greater contempt than where something is ordered to be done; for the former is still in a man's power, the latter not so.

On an order for payment of costs, a subpoend for such costs must be served personally, and the costs at the same time demanded; which costs, by the subpoend, are payable to the plaintiff, (or defendant) or bearer. And if it be an order for payment of other money, a writ of execution of such order is to Vol. I.

be personally served; and if the party himself to whom it is payable do not attend to receive it, at the same time the writ of execution is served, he must execute a letter of attorney to the person that serves the writ of execution; authorising him to demand and receive such money ordered or decreed in such writ of execution; and until the order under seal be served on the party himself, he is not ordinarily to be committed, or prosecuted, for contempt or disobedience thereto.

The Register is not to draw up or fign any order grounded upon an affidavit, unless it be first filed.

No orders, but final and decretal ones, shall be received to be entered after eight days of pronouncing them. Chan. Ca. 437. This rule is however often dispensed with; and if same entered of Term pronounced, it is sufficient if not entered in due time, and it should be necessary to enter same, an order, on motion or petition, must be obtained, to enter same nunc pro tune.

Solicitors affent to interlocutory orders may bind; but not to a reference finally to determine. 1 Chan.

Ca. 87.

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If one is brought into court to answer the breach of an order, if within the year, he shall answer upon interrogatories, without a bill: But if after the year, a bill ought to be filed to set forth the breach. Danv. 776.

A mistake in the title of an order, amended, tho' against a surety that gave a recognizance to abide

the order of hearing. 2 Vern. 376.

A. being beyond sea, sued B. at law; B. brings a bill in equity against A. the court will order, that service on the defendant's attorney at law shall be good service; but not that such attorney shall put in an answer without oath, 1 P. Will. 523.

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An order to make an election.

ORASMUCH as this court was this present day informed by Mr. - being of the defendant's counsel, that the plaintiff doth prosecute the faid defendant both at law and in this court for one and the same matter, whereby the defendant is doubly vexed; it is therefore ordered, that the plaintiff do, within eight days after notice to his attorney at law and clerk in court, make his election in which court he will proceed, and if he shall elect to proceed in this court, then his proceedings at law are stayed by injunction; but if he shall elect to proceed at law, or in default of fuch election by the time aforesaid, then the said plaintiff's bill is from thenceforth to stand absolutely dismissed out of this court, with casts to be taxed by Mr. - one of the Masters of this court.

Order to serve a subpæna upon an attorney.

UPON opening the matter of this day, &c. being of the plaintiff's counfel; and upon reading of an affidavit whereby it appears that diligent fearch and enquiry hath been made after the defendant, but he cannot be met withal to be personally served with a subpena issued out of this court at the plaintiff's suit, neither can his habitation or place of abode be discovered; it is thereupon ordered, that the leaving a subpena with the defendant's attorney at law be deemed a good service of the said defendant, whereby to compel him to appear to and answer the plaintiff's bill.

Order

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Order to add a defendant to a bill.

I PON consideration this present day had by the right honourable the Master of the Rolls, upon the plaintist's humble petition, for the reasons therein contained, it is ordered that the said plaintist be at liberty to insert into his bill the name of with apt words to charge him as a defendant thereunto.

Order to assign a guardian.

Mr. — being of counsel with the said defendants the infants, it was alledged that the said defendants the infants, being served with process to appear to and answer the plaintiff's bill, have appeared thereto, but cannot answer the same without having a guardian assigned them for that purpose; it is thereupon ordered that a commission be awarded to commissioners therein to be named, to assign a guardian for the said defendants the infants, by whom they may answer and defend this suit.

Order to set down a demurrer.

PON the plaintiff's humble petition this day preferred to the right honourable the Lord High Chancellor of Great Britain, for the reasons therein contained, it is ordered that the demurrer put in by the defendants to the plaintiff's bill be fet down to be argued the next day of demurrers after the demurrers already appointed; but this order is to be drawn up, and the demurrer entered with the Register within four days, or else the Register is to take no notice hereof.

Order to over-rule a demurrer.

THE matter upon the demurrer put in by the defendant to the plaintiff's bill coming this day to be heard before the right honourable the Lord High Chancellor of Great Britain, in the presence of counsel, learned on both sides, his Lordship upon opening and debate thereof, and hearing what could be alledged on either side, doth order that the defendant do answer the plaintiff's bill, and that the demurrer do stand over-ruled.

Order to dissolve an injunction unless cause.

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Order

WHERE AS the plaintiff obtained an injunction for stay of the defendant's proceedings at law, for the matters here in question, until the defendant should directly answer the plaintiff's bill, and this court take other order to the contrary; now upon opening of the matter this day unto this court by Mr. — being of the defendant's counsel, it was alledged that the defendant hath since put in a full and perfect answer to the plaintiff's bill, and thereby denied the whole equity thereof: It was therefore prayed, that the said injunction do stand absolutely dissolved, which is ordered accordingly, unless the plaintiff's clerk in court having notice hereof shall on — next shew unto this court good cause to the contrary.

Order to examine the regularity of an attachment, &c.

DPON opening the matter this day unto this court by Mr. —— being of the defendant's counsel, it was alledged that the plaintiff bath irregularly sued forth an attachment, and arrested

rested the desendant thereon, before the time for answering was elapsed; whereupon it is ordered that Mr.—one of the Masters of this court do examine and certify whether the áttachment did duly and regularly issue or not, and in the mean time all proceedings on the bail-bond are stayed.

Order to examine into the irregularity of returning a proclamation.

ant this day preferred to the right honourable the Master of the Rolls, shewing that the plaintiff, contrary to the rules and practice of this court, hath sued out process of contempt against the defendant to a proclamation, which the plaintiff hath procured to be returned without endeavouring to arrest the defendant on the first or other of the said process; whereupon it is ordered that it be referred to the two senior Six clerks not concerned in this cause, to examine and certify touching the said irregularity; and in the mean time all further proceedings on the contempts are stayed.

An order for the Six clerks to certify the due taking of the defendant's plea, answer and demurrer.

by Mr.—being of the plaintiff's counted, it is ordered that the two fenior Six clerks, not concerned in this cause, do examine and certify whether the defendant's answer, plea or demurrer be duly and regularly taken and returned or not, and whether the commission for taking the same duly issued.

Order

Order for a habeas corpus.

CORASMUCH as this court was this prefent day informed by Mr. --- being of the plaintiff's counsel, that the defendant being served with process to appear to and answer the plaintiff's bill, doth refuse so to do, but fits in contempt to an attachment for want thereof, on which he hath been arrested, and is now a prisoner in the Fleet prison; it is thereupon ordered that a babeas corpus be directed to the Warden of the Fleet at the return thereof, to bring the body of the faid defendant to the bar of this court to answer his said contempt; whereupon such further order shall be made as shall be just.

Order to refer a second answer.

UPON opening of the matter this day unto this court by Mr. --- being of the plaintiff's counsel, it was alledged that the plaintiff having taken exceptions to the infufficiency of the defendant's first answer, the defendant hath put in a second answer, which the plaintiff is advised is also insufficient; it is therefore ordered that it be referred to Mr. — one of the Masters of this court, to look into the faid bill, answers and exceptions, and examine and certify whether the faid defendant's answers be sufficient in the points excepted unto or not.

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Order for a commission to examine de bene esse, and to refer exceptions.

ORASMUCH as this court was this prefent day informed by Mr. -- being of the plaintiff's counsel, that the plaintiff long fince exhibited his bill unto this court against the defend-

ant,

ant, whereunto the defendant hath put in infufficient answers, and hath thereby delayed the plaintiff's proceedings to iffue in this cause, by which means the plaintiff is like to lose the testimony of a very material witness, he being a great dealer at sea, and now ready to go a voyage beyond sea; it was therefore prayed that the plaintiff may take out a commission to examine his witnesses de bene esse to preserve their testimonies, and the desendant may join in the same if he pleases; which is ordered accordingly; and it is further ordered, that the bill, answers and exceptions be referred to one of the Masters of this court to consider of the same,

Order to renew a commission.

this court by Mr. — being of the defendant's counsel, and upon reading of an affidavit whereby it appeared that the defendant could not procure A. B. and C. D. his commissioners to be present at the execution of the said commission, which was executed the last Vacation in this cause; and forasmuch as the said defendant hath many material witnesses to examine in this cause, as namely E. F. and G. H. which he could not procure to be examined by the said commission; it was therefore prayed that the said defendant might renew the said commission returnable—, which this court held reasonable, and doth order the same accordingly.

Order to flay proceedings on exceptions to a report.

by Mr. — being of the defendants counter, it was alledged that the defendants have filed exceptions

exceptions to the report made in this cause by Mr. — one of the Masters of this court, bearing date the 22d of — last, and deposited 5 l. with the Register according to the rule of this court, as by the Register's certificate appears; it is thereupon ordered that all proceedings upon the said report be stayed until the matter upon the said exceptions shall be heard and determined by this court.

Order to confirm a report unless cause.

day by Mr. — being of the plaintiff's counsel, and upon producing of a report made in this cause by Mr. — one of the Masters of this court, bearing date the —day of — instant, it is ordered that the said report, and all the matters and things therein contained, do stand ratified and confirmed by the order, authority and decree of this court, to be observed and performed by all parties thereto, according to the tenor and true meaning thereof, unless the said defendant, having notice hereof shall within eight days after such notice shew unto this court good cause to the contrary.

Order for a supersedeas upon an arrest.

S

DPON confideration had this present day by his Honour the Master of the Rolls, upon the desendant's humble petition, and of the Master's report therein mentioned, whereby it appears above 500 l. is reported due to desendant, and that the desendant came up to town only to desend and prosecute exceptions taken to that and another report, whereof one of them is referred to a trial at law, and that during the desendant's attendance here

here on that occasion he is arrested at the plaintiff, fuit, as by affidavit annexed appears, contrary to the privilege that suitors ought to have in going attending, and returning; his Honour doth there upon order, that a supersedeas do issue to the Sheriff of Middlesex to discharge the said defendant of the said arrest, he being only arrested on mesne process.

Order to dismiss a bill for want of a replication.

FORASMUCH as this court was this prefent day informed by Mr. — being of the defendant's counsel, that the plaintiff exibited his bill into this court against the said defendant in Michaelmas Term last, to which the defendant answered the same Term, since which time the said plaintiff hath not surther proceeded in this cause, as by certificate now read appeared; it is thereupon ordered that the said plaintiff's bill do stand dismissed out of this court with costs; and it is hereby referred to Mr. —, one of the Masten of this court, to tax the said costs,

Order nisi for a subpæna duces tecum.

by Mr. ——, being of the plaintiff's counted, it is ordered that a fubpoena duces tecum be awarded against the said defendant to bring into this countertain deeds and writings by him confessed in his answer to be in his custody, or at the return thereof to shew cause to the contrary.

Order for a subpæna duces tecum.

FORASMUCH as this court was this prefent day informed by Mr. ——, being of the plaintiffs counsel, that the defendant having by tiff,

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his answer to the plaintiff's bill confessed the having in his custody a feosiment or other writing of the lands in question, conveyed from A.B. to C.D. wherein the plaintiff claimeth title; it was therefore prayed that a subpana duces tecum may be awarded against the said defendant to bring the said writings into court, which is ordered accordingly.

Order for a Serjeant at arms,

WHEREAS the faid defendant hath fit out all process of contempt to a commission of rebellion, for want of his answer to the plaintiff's bill, as by the same under the seal of this court, and the commissioners certificate thereupon indorsed, whereby the said commissioners do certify that the said defendant doth abscond himself so that he cannot be taken thereupon, now produced appears; it is therefore ordered, upon the motion of Mr. — being of the plaintiff's counsel, that the Serjeant at arms attending this court, do apprehend the said defendant, and bring him to the bar of this court, to answer the said contempt,

Order to examine viva voce.

DPON motion made this day unto this court by Mr. —, being of the plaintiff's counsel, it is ordered that the plaintiff be at liberty to examine one or more witnesses viva vace, at the hearing of this cause, to prove the execution of a certain deed or writing bearing date the —— day of —— 1767, made between A. B. of the one part and C. D. of the other part, and also a bond from E. F. to G. H. bearing date the —— day of —— 1767, in the penalty of 1001. for payment of 501. and interest to the said G. H. saving to the defendant all just exceptions.

Order

Order for a subpoena in nature of a scino facias.

DPON opening of the matter, &c. by Mr.
—of the plaintiff's counsel, it was alledged that the plaintiff having obtained a decree against the defendant, he died before the performance thereof, leaving C. D. Esq. his brother and heir; wherefore it was prayed that a subpena in nature of a scire facias might be awarded against the said C. D. to shew cause at the return thereof why the said decree should not stand revived against him, and be of the same force and effect as the same was at the time of the decease of the said C. D. which is ordered accordingly.

Order to stay proceedings on a decree, upon filing a bill of review.

PON opening, &c. it was alledged that the faid plaintiff hath filed a bill of review against the faid defendant, and also given security by recognizance to abide such order as the court shall make upon hearing this cause upon the said bill of review, according to the course of the court, as by certificate appears, and yet the said defendant dots prosecute the plaintiff with process of contempt for not performing the former decree made in this cause; it was therefore prayed that the plaintiffs bill of review may be admitted, and that all proceedings on the said decree may be stayed till the matter of the said bill of review be heard and determined by this court; which is ordered accordingly.

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Order to stand committed for not performing a decree.

TPON the plaintiff's humble petition this day preferred to the right honourable the Lord High Chancellor of Great Britain, it was alledged that the plaintiff in --- Term --- obtained the decree of this court against the defendant, for vacating a recognizance, amongst other things therein contained, and that the said defendant hath flood out all process of contempt to a commission of rebellion, which hath been several times renewed against him, he absconding, that he could not be taken till now of late; and thereupon the faid defendant entered his appearance with the Register of this court, and hath fince been examined upon the contempt; and the faid examination having been referred to Mr. - one of the Masters of this court, the faid Master hath certified the faid defendant is guilty of the faid contempt; and forafmuch as the faid plaintiff hath not had any benefit of the faid decree, but hath been at great charges in profecuting the faid defendant, and endeavouring to compel him to yield obedience thereunto, which he hath obstinately refused to do, to the great damage of the faid plaintiff; it was therefore prayed that the defendant might stand committed unto the prison of the Fleet until he shall perform the said decree; which his Lordship held reasonable, and doth order the same accordingly.

An order for an injunction to put and quiet the plaintiff in possession, according to a decree.

UPON opening the matter this present day unto this court by Mr. ——, being of the plaintiff's counsel, it was alledged, that by a decree

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cree of this court, bearing date the - day d - 1767, as also by a former decree of the day of - 1765, the defendant is to execute conveyance of a certain tenement and farm in - the county of - to hold to the plain. tiff and his heirs, after the death of - and his wife both fince deceased, which the plain. tiff and his heirs are to have and enjoy accordingly, and that the defendant do deliver up the writing touching the premiffes to the plaintiff upon oath; and that the defendant hath been duly served with the faid decree, and conveyances directed to be fertled by Mr. - one of the Masters of this court. and which were fettled accordingly, have been tendered to him to execute, which he refuses to do, a by affidavit now produced appeared, and is in contempt for breach of the faid decree; it was therefore prayed that an injunction may be awarded to put and quiet the plaintiff and his affigns in the possession of the said premisses, according to the faid decree; which is ordered accordingly.

(8thly) Of paying and receiving money in this court.

A LL sums of money, &c. decreed to be paid into this court, must by the late act 12 G. I. be paid into the bank, with the privity of the Accountant General of this court, and placed to the credit of the cause.

And note, that any of the parties may apply to the court, that such sums, &c. may be placed out on government securities, &c. for the benefit of the parties interested in the cause.

And when any of the parties, or other persons, want to have their money which is reported due to them; you must first give notice to all the

parties, that you intend to move the court, and up-

on producing a certificate from the Accountant General, and the Master's report, the court will order it.

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Then you carry this order and the report to the Accountant General's office, who will thereupon give you a cheque note upon the bank, which you must get entered in the Report office, and then, upon carrying the order and report to any of the Registers, they will sign the note gratis; and after that you have nothing more to do than to go to the bank and receive the money.

Note; None but parties, or their legal reprefentatives, can obtain this note, for representatives must make it appear that they are such, by producing the administration and the like; yet if the person to whom the money is reported due, does not appear himself, then he must execute a letter of attorney, authorising such person as he shall think proper, to receive the money, &c. And upon an affidavit of the due execution thereof thereto annexed, and upon carrying and leaving the letter of attorney and affidavit, the Accountant General will give such note to the attorney thereby

appointed.

By an order dated 2 July 1739, reciting the act passed 12 Geo. 2. intitled, "An act to impower "the high court of Chancery to lay out, upon "proper securities, any monies, not exceeding a "sum therein limited, out of the common and general cash in the bank of England, belonging "to the suitors of the said court, for the ease of the said suitors, by applying the interest arising "therefrom, for answering the changes of the office of the Accountant General of the said "court," It is enacted, that out of the money that lies dead in the bank, belonging to the suitors of this court, a sum not exceeding 35000 l. should, by virtue of any order of this court, be placed out

in one intire fum for the purpoles thereafter mentioned. Whereupon it is ordered, that out of this cash in the bank belonging to the suitors of this court, 35000 l. be placed out with the privity of the Accountant General in the purchase of 3 per cent. annuities anno 1731, in trust for the fuitors of this court, subject to the further order of the court. And out of fuch interest the bank is from time to time, without any draught, to pay, by quarterly payments, the annual fum of 10201 in manner following, that is to fay, To Mark Thur. ston, Esq; Accountant General of this court, 650% To Mr. John Waple, his first clerk, 250 1. and to Mr. Henry Nowell, his second clerk, 120 l, till the further order of the court, which falaries are to be in lieu of, and in recompence and satisfaction for all fees which shall be payable to the Accountant General's office by the fuitors of this count. And it is further ordered, that from the twentyninth of September then next no fee or fees whatfoever be taken at the Accountant General's office. or by any officer or clerk belonging thereunto, for any matter or thing directed to be done by the act 12 Geo. 1.

And by an order 1 August 1741, touching inconveniencies that may arise in receiving from the Exchequer the annuities due, and which shall grow due on Exchequer orders and tallies for want of having the same entered at the Exchequer, and proper indorsements made thereon, that the annuities of such orders are to be paid to the cashier of the Bank of England for the use of the suitors, It is ordered, that the Bank of England do, by their proper officer or officers, send to the Exchequer all such Exchequer orders belonging to the suitors of this court, and then in the Bank, to the intent that the proper officer or officers of the Exchequer may make entries in the books kept there, and indorsements

ments on the faid orders, that the annuities due and which shall grow due thereon respectively are to be paid to one of the cashiers of the Bank of England for the time being, to be placed to the credit of the respective cautes to which the said orders do belong, and to no other person or persons whatsoever without the further order of this court; and that the like entries and indorsements be made on all such Exchequer orders, as shall hereafter be delivered into the Bank on account of any of the suitors of this court, by virtue or in consequence of any decree or order of this court.

In order to apply to court for monies due to infants when of age, the folicitor must draw and ingross a petition for that purpose, which must be directed to the Master of the Rolls, and personally served on all the parties to the suit. He must likewise get the Accomptant General's certificate, and the Master's report. On the hearing of this petition a proper affidavit and certificate of the infant's being of age must be produced to the court. For certificate, affidavit and petition, see those heads in table.

(9thly) Of Injunctions.

A N (1) injunction is a remedial writ, in nature of a prohibition; to obtain which, party's right or injury, applying for same, must be certified to (2) court.

All injunctions are commonly obtained by order, upon motion, either upon matter confessed in answer, or upon some matter of record, or on some deed, writing, or other evidence produced in

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⁽¹⁾ In order to procure injunction, affidavit, certifying allegations of bill, was admitted to be read. Bunb. Rep. 35. pl. 54. will be granted for one defendant against another.

^{(2) 2} Vern. 276. VOL. I.

waste, or cutting down trees, which may be granted in the long (1) Vacation.

Injunction after answer is never obtained with out giving two days notice thereof, in writing, to defendant's clerk in court, in order that he may, by his counsel, defend same, if he chuses so to do.

It may be obtained after answer and demurrer, on amended (2) bill: So it may where defendant cannot be found, to be served with a subpana.

If injunction be granted on merits, or special cause of equity, same commonly stands till hearing, unless plaintiff delays his suit.

If defendant doth not appear in time, then you may draw and ingross an affidavit of serving the fubpæna, and let it be sworn and filed; upon which you get an attachment issued for want of an appearance; and then you give instructions to counsel to move thereon for an injunction, which is granted of course.

But if the defendant (3) appears in time, and does not answer in time, then on an attachment for want of an answer, or upon the defendant's craving a dedimus to answer in the country, or a defendant getting time to answer, an injunction will be granted of course, which is generally until answer and other order.

But after appearance and answer in time, the court must be applied to for an injunction on the merits; in which case you must draw a brief of the pleadings for counsel, and give a notice of motion in writing for such injunction to the defendant's clerk in court.

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⁽¹⁾ See mjunctions against wafte, feiling timber, &c.

⁽a) Gilb. Hift. Chan. 183 but see contrary, under "In what ease in-

⁽³⁾ After appearance no special injunction can be obtained with out notice 2 Vcz. Rep. 112.

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An injunction upon an attachment, dedimus, or upon the defendant's praying time to answer, does not extend to stay proceedings in the spiritual court, without special order. P. Will. Rep. 301.

Injunctions are usually granted in the cases, and

or the purposes following, viz.

1. To stay proceedings at law.

2. Waste or damage to freehold, by felling timber, pulling down buildings, &c.

3. To yield up, quiet, or continue possession of lands,

&c.

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- 4. To quiet possession before bearing.
- 5. Against continuing nuisances.
- 6. To prevent multiplicity of suits.
- 7. In ejectment causes.
- 8. To stay building; and berein of stopping up ancient lights,

9. On patents, &c. (1)

1. To flay proceedings at law.

ILL for this injunction usually suggests (2) some rigorous proceedings (3) at law, begun threatened by defendant; or that he ought to

1) Stays them, after election to proceed in this court.

⁽¹⁾ As to restrain from selling a place; to prevent using an old road; from ring, engraving, &c. and selling of prints. Barnard. Chan. Rep. 211. injoin the printing or vending printed copies of books, see a Black. Com. 7. 4 Vin Abr. 278. pl. 3. 279. a Tr. Atk. Rep. 142, 143, 342. Lit. Prop. 19, 27, 28, 31, 33, 34, 61, 96, 97, 121.

1) Where a bill suggests, that suit at law is against conscience, if defend-

³⁾ Where a bill fuggefts, that fuit at law is against conscience, if defendis incontempt, for not answering, or prays time; it is held by this court becontrary to conscience, to proceed at law in mean time; and therefore

be discharged from suit in question, by reason that debt is stale, and defendant hath flept long! or that debtor and creditor have been both dead long before action brought; if, on notice of the injunction, defendant hath not commenced his action, he cannot fue out process; if he hath, but not ferved same, or in case he hath, but not delivered (1) or filed any declaration, he cannot proceed; if there be a declaration, he may call fora plea, and for want thereof fign judgment; if caule be at iffue, he may go to trial; if that hath been had, and verdict obtained, he may proceed to judgment, and (2) affirm, if error hath ben brought; but if judgment hath been executed, and debt and costs levied thereon, sheriff cannot pay fame to defendant; execution being (3) flaped, but only till answer filed, and further order.

This injunction is granted of (4) course, and if defendant be guilty of a breach thereof, upon being ferved therewith, court will commit him for contempt, as if there had been no clause therein

of liberty for calling for plea, &c.

This injunction is granted for bankrupt, or producing his certificate, for fuing him after fame allowed and confirmed, and fo it will on profece

tion for perjury till hearing.

A (5) diverted watercourfe, which put B. to great expence in laying of fooths, &c. and dive-· fion being nuisance to B. he brought an action, against which injunction was granted upon bill exhibited for that purpose; it being proved that

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or

^{(1) 2} Kel. Rep. 17. pl. 15. (2) On Motion. Chan. Caf. 448.

⁽³⁾ And that only touching the matters in question between the parish In Exch quer all proceedings are stayed, be cause in what stage it may,
(4) Gilb. Hist. Chape. 194.

^{(5) 2} Eq. Caf. Abr. 522. pl. 3.

B. did see work when carrying on, and connived at it, without shewing least disagreement, but rather approbation and consent.

If person is sued at law, for irregularly serving process of this court, injunction will be granted on motion, and affidavit of fact, to stay proceedings; for the irregularity is only punishable in this (t) court.

If bill is to stay suits at law, you may have subpana before (2) bill filed, by stat. 4 & 5 An. c. 16. and after it is, and defendant hath appeared, you may, on filing affidavit of the proceedings at law, and notice of motion, apply for injunction on merits.

Unreasonable delay is good cause for dissolving this (3) injunction.

Where this injunction is granted until hearing, court may then either diffolve injunction, or, if they see cause, order same to be made perpetual.

Lord Chancellor (4) Macclesfield granted an injunction against a bond of resignation, on account of the ill usage that had been made of it; and not on account of any defect in the bond itself, which his Lordship was pleased to declare he held good.

On a verdict at law, money must be deposited,

before injunction will (5) be granted.

Injunction granted by King, Chancellor, against suing the acceptor of a bill of exchange, his acceptance having been declared void by the law of a foreign country, the same vacated (6) there, and party absolutely discharged.

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(1) But bill ought to be filed before return of Subpaena.

⁽¹⁾ Vern. 269.

⁽³⁾ Yet court will fometimes, upon motion, revive injunction, altho' the same be diffo ved, especially where equity appears evidently for plaintiff, or as case is hard.

⁽⁴⁾ stra. Rep. 534. (5) Chanc. Cal. 447.

⁽⁶⁾ Mof. Rep. 1, 69. 12 Vin. Abr. 87. pl. 9. 2 Eq. Caf. Abr. 476, pl. 524. pl. 7.

If plaintiff prays to stay proceedings at law up on bond, they shall not be stayed, unless he fub mits to be bound by order of court, not to bring any writ of (1) error .

For more on this subject fee " In what cases in

junctions are denied."

2. Injunctions to flay waste.

OURT will grant injunction to stay waste, as foon as fame is begun, or to prevent fame, if reasonable ground be shewn to apprehend the committing thereof, in (2) Land, (3) woods, or houses; by felling (4) timber, or other trees, de stroying (5) buildings; or for or against committing any other kind of waste whatsoever, and sud injunction will be granted, on (6) motion, certificate of bill filed, and affidavit (7) of facts, being produced; against a (8) jointress; tenant by (9) the curtefy; or any other particular tenant; fob patron against parlon, for committing waste or (10) glebe; fo on behalf of an infant en ventre h mere; and likewise for reversioner or remainder

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⁽¹⁾ Vern. 120.

⁽²⁾ As by plowing ancient meadow or pasture. Chanc, Rep. 14, 14, 1716. Toth. 143, 144.

⁽³⁾ Toth. 83. (4) Chan. Rep. 242. (5) As a castle, or defacing a seat. Salk. 161. pl. 14. 2 Vern. 738. 4 647, Chan. Prec. 454. Gilb. Eq. Rep. 127. See 22 Vin. Abr. 520. 1

⁽⁶⁾ In long Vacation, [viz. Trinity,] when court does not fit, and conquently no motion can be made, Lo d Chancellor, upon petition, certifies of bill filed, and affidavit of facts, will grant injunction to flay waste complained of.

⁽⁷⁾ Which must fatisfy court how party derives his title to estate in gate tion, in cause, and also that some waste or spoil is done or threatened.

⁽⁸⁾ Toth. 144.

⁽⁹⁾ Hardr. 96.

⁽¹⁰⁾ Barnard. Chan, Rep. 399.

man in fee, against tenant for (1) life in possession, though he be not punishable for (2) waste, at (3) common law; this being a special mischief: and belides though fuch tenant for life is not punishable, during continuance of remainder, yet after determination of that estate he is. So likewife court will grant this injunction against (4) a leffee, that is against those, who held mediately, or immediately, under him, who prays the writ. and those only: and where party's right, who makes application, appears apparent on (5) record, court will grant fame before answer filed.

In order to reconcile a feeming contradiction in what hath been laid down above, respecting tenant for life, not being punishable for committing waste, viz. that be is and is not punishable; turns. upon the difference, whether he be difpunishable of waste, only from the nature of his estate, or by an express grant thereof; for the first mentioned tenant for life is restrained from committing any kind of waste; whereas the latter may cut down (6) timber, plow (7), open new (8) mines; but he will be restrained from pulling down houses or defacing (9) feats; because this is an abuse of the power, derogatory to the grant, and contrary to the intent of the privilege of " without impeachment of (10) waste."

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⁽¹⁾ Salk, 161, pl. 14. 2 Vern, 738, pl. 647. Chan. Prec. 454. Gilb. Eq. Rep. 127, See 22 Vin. Abr. 520, pl. 20.
(2) Rol. Abr. 337, Mo. 554 Toth. 61. Cary's Rep. 26, 36. Vern. 23, Co. Lit. 54. 2 Inft. 301. 5 Rep. 76.

⁽³⁾ Toth. 188.

⁽⁴⁾ Chan. Caf. 450, but not easily against a Mortgagee. Id. ib.

⁽⁵⁾ Vez. Rep. 454, 476.

⁽⁶⁾ Chanc. Rep. 242.

⁽⁷⁾ Vern. 23.

⁽⁸⁾ Salk. 161. pl. 14.

^{(9) 2} Chan. Caf. 32. Salk. 161.

⁽¹⁰⁾ Salk 161. But if defendant thews that he has an eftate, " without impeachment of waste," injunction is ordinarily denied or differed, in case same be applied for, or granted, for flaying waste only.

If bill is to fay (1) waste, you may have subpans before (2) same be filed; and after defendant hath appeared, affidavits of waste may be filed, and upon notice of motion, injunction will be granted if there be merits.

3. To yield up, quiet, or continue possession of Lands.

HIS fort of injunction is a judicial writ, and fubsequent to decree, being in nature of writ of execution, or Hab. Fac. Poff.

4. To quiet possession before hearing.

OURT of Equity hath jurisdiction to quiet men in their possessions (3); and therefore fometimes, in ordinary cases, grant injunctions to quiet them, before (4) hearing, to party having fame: as for instance; where party hath been in possession three years, and another disturbs him in fuch possession, this (5) court will grant injunction to quiet him in it; on this ground the law patentees had injunction to restrain defendants from proceeding in printing any law (6) books; and the company of stationers to stay books in custom house, and hinder sale of statute books, printed (6) beyond sea: It will stay defendant from disturbing plaintiff in quiet possession of a pew.

⁽¹⁾ Stat. & & 5 An c. 16.

⁽²⁾ But bill ought to be filed by, or before the return of Subpana.

⁽³⁾ By Coke, Ch. J. 3 Bulftr. 34. Lit. Rep. 166. Rol. Rep. 190.
(4) Affidavit verifying allegations in bill, was admitted to be read on moving for such an injunction. Bunb. Rep. 35. pl. 64. But this fort of in-junction, it is said, hinders not defendants at law, from making leases, taking diffreffes; and it may be diffolved on cause shewn, as other injunctions.

⁽⁵⁾ Toth. Rep. 37. Cary's Rep. 66. Vern. 156. (6) 2 Chanc, Caf. 76.

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Where defendant was in possession, at time of exhibiting bill, plaintiff afterwards entered; injunction was granted against him to avoid possession; and in another case, defendant prayed, he might have injunction, or that bill might be dismissed; court held the application reasonable, and that he was well intitled to one or the (1) other.

Sometimes, pending suit, court will order party possession by injunction, or that rents, not already paid, shall be stayed in tenant's hands till hearing, and sometimes will order both; at other times will order (2) Receiver, who, (upon giving good security) shall take rents and profits, and pay them into court, or account for them, when court shall require him so to do.

5. Against continuing a nuisance.

OURT will grant injunction, before answer filed, for a plain apparent nuisance, on certificate, affidavit, and notice to the party his clerk in court, or solicitor: But in case of a special nuisance court expects party to shew his right and how he is particularly aggrieved, before this injunction will be granted.

6. To prevent multiplicity of Suits.

INJUNCTION may be obtained in order to prevent multiplicity of fuits; in this case court will direct verdict at law to determine them (3) all.

⁽¹⁾ Cary's Rep. 51, 63, 140.

⁽² Receiver to enter into such recognizance as court directs, to secure his accompting for, and paying such rents into court.

⁽³⁾ Gilb. Hift. Chanc. 195.

7. In ejectment cause.

OURT never denies injunction in ejectment cause, where plaintiff agrees to give judgment, with release of errors, and consents not to bring any writ of error thereon, and sometimes is added by court, to deliver peaceable possession of premisses in dispute, in case same should be decreed on hearing cause; these terms are directed, in order to save the trouble, delay, and expence of trial at law.

8. Staying building, and herein of stopping up ancient lights.

OURT (1) will interpose instantly by injunction to stay building, which will stop up ancient lights, by prescription or agreement, but the allegation that the building will stop them up must be suggested by bill.

9. On patents.

OURT (2) granted an injunction, on patent for printing almanacks, to restrain printing same, but not till patent had been produced in open court, under the broad seal.

The other matters touching injunctions, feem reducible to the following particulars, viz.

^{(1) 2} Vef. Rep. 452, 543. Gilb. Hift, Chanc. 193, 194. (2) Gilb. Hift, Chane. 194.

- 1. In what cases injunctions have been denied.
- 2. Service of them.
- 3. Continuing them.
- 4. Dissolving them.
- 5. Irregular injunctions.
- 6. Perpetual ones.

O

3. In what cases injunctions have been denied.

A CCORDING to the usual course of practice in this court, no injunction can be obtained on an (1) amended, supplemental, or original bill, between same parties, where first bill to stay proceedings at law, was dissolved (2) on merits.

Injunction hath been refused, while (3) plea or demurrer was depending; for until it be argued, it appears not whether court hath cognizance of cause.

Exceptions to answer without report of its insufficiency, not good cause for obtaining injunction; because often filed for delay; and court will not presume exceptions valid, till so ascertained by master's report.

According to the customary practice of this court, injunction is never to be granted (4) before bill filed, unless in particular cases, where there would be a manifest failure of justice, deprivation of right, by the act of God or of the party himself, and in the cases of committing waste, or restraining suits at law and such special instances which

⁽¹⁾ After answer and demurrer, bill was amended, and then injunction granted. See Gilb. 183.
(2) 2 Ves. Rep. 20.

^{(3) 3} P. Wil. Rep 396. by Lord Chane. Talbot.

^{(4) 4} Inft. 92. Vern. Rep. 156. Eq. Caf. Abr. 285. pl. 6.

are always exceptions to all general rules; but that they are such, must be shewn to the court, in order to induce them to dispense with their ordinary proceedings; some we will adduce. Pending suit brought by mortgaged to foreclose, advowson appendant to mortgaged manor became void, and though he had no (1) right to present, brought his quare impedit, but court granted injunction on defendant's application, though he had no bill (2) filed. Again,

Where cause abated by death of defendant's testator, who being served with letter missive and copy of bill of revivor, would not appear, being in (3) privilege, upon motion, injunction was grant-

ed, though cause not (4) revived.

For more of this subject, " see Injunctions to

" flay waste," and " proceedings at law."

Court will not grant an injunction unless a (5) right appears. As upon a motion for an injunction to stop the sale of English Bibles printed beyond sea, the Lord Keeper declared, he could not grant an injunction, but where a man has a plain right to be quieted in it; and directed trial, wherein the patentees to be plaintiss, and the defendants to admit they have solve twelve Bibles; and when the trial is over to come back (6) again. So where the University of Oxford had a patent for printing of Bibles, the King's Printers, being intitled under a patent, brought a bill to restrain them; though the court was of opinion, that the University could not print more than for their own use;

^{(1) 4} Vin. Abr. 550. pl. 10. (2) 2 Vern. 401.

⁽²⁾ All privilege from fuits is taken away by Stat. 10 Geo. 3. c. 50. (4) Eq., Caf. Abr. 285. pl. 5. another to reftrain working of mines. Eq. Caf. Abr. 285. pl. 6.

⁽⁵⁾ Vern. 276. (6) Vern. 120.

yet it being a right determinable at law, would not grant an injunction, but directed (1) a trial. And where the East-India Company prayed an injunca tion to restrain the defendant from trading to the East-Indies, though the court was far from think? ing the Company's parent void, which had been confirmed by fo many Kings; yet the validity of the patent being triable at law, an injunction could not be granted, till it was determined there: and a trial was (2) directed.

Court will refuse to grant injunction against will bequeathing personal estate, under pretence of

fraud (3) therein.

2. Serving injunction.

INJUNCTION is served by shewing (4) original under feal, and (5) delivering true

copy thereof to party (6) himself.

If the party or his attorney proceed at law, after fervice of an injunction to flay proceedings, on affidavit sworn and filed of the service thereof, an attachment iffues against the party for breach of the faid injunction: And if he be arrested on the faid attachment, and enters his appearance with the Regifter on the faid attachment, interrogatories are to be filed and exhibited against him, to which he must answer upon oath; and if he denies the service, the other party may examine one or more witnesses to prove the service; which if it be proved upon him.

(6) Service must be personal on party.

⁽¹⁾ Vern. 275.

⁽²⁾ Vern. 127. 2 Chanc. Caf. 165. (3) 2 P. Wil. Rep. 287.

⁽⁴⁾ If original injunction be shewn at time of service, it need not be delivered in order to compare fame. 2 Chanc. Caf. 203.

⁽⁵⁾ But it hath been held that leaving it with party's attorney's or folicitor's clerk or fervant, is good fervice.

the court will commit him to the Fleet prison; and make him pay all cofts and charges before he be

discharged.

But the modern and usual way, where an injunc. tion is ferved, and the party is in contempt (1) for breach thereof, is to give notice of motion to the adverse clerk in court, that the party may be committed to the Fleet prison for breach of the said injunction: And having made an affidavit of the fervice of the faid injunction, your counsel moves it; and if the other fide are not prepared to defend fuch motion, the court usually gives them a day to shew cause against such motion; and then upon hearing the affidavits on both sides, the court decides whether the party is guilty of the breach of the injunction or not; and if he be, makes an order for his commitment to the Fleet prison, from whence he cannot be discharged until he has paid the adverse party his costs; and sometimes until he has made restitution to him for the damages he may have fustained for breach of the faid injunction.

Bailiffs who had ferved execution for breach of injunction, found money hid in house, which they took away; ordered (2) that plaintiff make good money to defendant, and fatisfy all damage

he would swear he had (2) sustained.

(1) Though injunction is irregularly obtained, party will be in contempt for disobedience thereof, See 2 Chan, Caf. 203. his remedy for redress, be-

(3) Vern. 207.

white merely a morany and the

ing to apply to court, to fet fame afide for irregularity. Id.

(2) This fectors an inequitable order indeed, it does not come within the rule of "in edium fpoliatoris omnia prefumuntur," because the party punished was not, in this case, the party offending; but for court to give person in contempt liberty to swear to what damages he pleases, seems to me, to be beyond all reason, precedent, and example.

3. Of continuing injunctions.

NJUNCTION may be continued on ex-

ceptions to answer.

Plaintiffs alledging to court, on defendant's anfwer coming in, that same was insufficient, in order to prevent injunction being diffolved, is not fufficient ground to induce court to continue (1) injunction.

In some particular cases court will continue injunction after (2) defendant hath fully answered

equity of bill.

Where (3) an injunction shall be continued till fome of the defendants put in their answer, by reafon that those defendants that live in Ireland, have been served with process, and have not put in their answer, and that bail is given in the action.

Where (4) an injunction shall not be continued till the hearing, but only till the answers of some of the defendants come in, when they live in Ireland.

Court (5) will not continue injunction against penalty of bond, unless money be brought into court, or judgment confessed at law with release of errors, and if plaintiff be infolvent, court will suffer defendant to proceed at law, to second sci. fac. in order to make the bail liable.

Injunction granted on merits, or on special cause of equity, commonly continues till hearing, unless

plaintiff delays his fuit.

See more under next bead:

^{(1) 2} Vef. Rep. 453. (2) 2 Vef. Rep. 19. (3) Barnard, Chanc. 354.

⁽⁵⁾ Chane. Caf. 444.

4. Diffolving injunctions.

A LL injunctions are dissolved upon motion in open court; and if the same be obtained on attachment for want of appearance or answer; so soon as contempt is (1) cleared, and answer (2) filed, instructions must be given to counsel to move to dissolve injunction (3) for the purpose of giving adverse party opportunity to shew cause why is should not; this order being obtained, same must be drawn up, entered, and served on plaintist's clerk in court.

If, on day to shew cause, same be shewn on merits, injunction is sometimes continued to hearing; and if exceptions are filed to answer, and shewn for cause; then plaintiff is sometimes ordered to procure master's (4) report in (5) a week; or in default thereof, injunction to stand dissolved, without further motion.

If report be not procured in reasonable time, or if answer be reported sufficient; upon motion, in junction will be dissolved nist, and sometimes ab-

folutely.

In the usual course of practice, after answer comes in, defendant moves to dissolve injunction on merits, which is generally granted, if defendant hath fully answered equity of plaintiff's bill, otherwise (6) not.

defendant answers exceptions.
(5) Usually in four days.

(6) 2 Vel. Rep. 19.

⁽¹⁾ That is the costs paid, (which are ten shillings,) or tendered to phis tiff's clerk in court,

⁽²⁾ To diffolve injunction, upon coming in of answer, unles cause, is motion of course, an affidavit of serving of order nist being filed.

⁽³⁾ If plea is ordered to stand for answer, motion must be to dissolve in junction miss, not absolutely. Mos. Rep. 198. pl. 111.

(4) If master reports answer insufficient, injunction will be continued, till

When a plea or demurrer is argued by counsel, and allowed, there is generally, though not always, an end of the injunction; for some equity may be shewn for continuing it, arising out of the defendant's answer, put in with such plea or demurrer; And upon a plea or demurrer being allowed, or on coming in of the answer, the court will not absolutely dissolve the injunction on the first motion, the upon affidavit of notice, but only nifi.

Injunction in cause abated by death of either party, unless motion to revive same within stated

time, will be dissolved.

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Injunction for want of answer dissolved, because not ferved till feveral months after (1) answer come in.

On cross bills, if, when first is answered, second is not answered in eight days, injunction will be

diffolved on motion.

Court will not diffolve injunction continued on exceptions, if they have been not filed a reasonable time before motion made.

If master's report is not procured in reasonable time, after exceptions filed, or if answer is reported sufficient, injunction will be dissolved (2) nisi.

Causes for not dissolving injunction.

- 1. Want of appearance, or answer.
- 2. Not baving cleared contempts.
- 3. Not baving denied all equity.
- 4. Answer being reported insufficient.
- 5. All defendants not baving answered.
- 6. Plaintiff baving (3) equity, or bis case being bard.

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7. Be-

^{(1) 2} Kel. Rep. 43. pl. 29.
(2) Sometimes absolutely on first motion.
(3) Injunction granted on special cause of equity, commonly stands till hearing, unless plaintist delays suit.

7. Because exceptions to answer came in only night or morning before motion to dissolve.

Injunctions not usually dissolved at last seal after term; nor ever but upon motion of adverse party.

For more on this subject, see "Injunctions to quint possession before bearing:" "Irregular injunctions:" "Continuing injunctions."

redrie to danab ed baseds enter at the first and adding. Inregular injunctions.

I Finjunction be irregularly obtained, it is a motion of course to refer same to master; and if he reports injunction irregularly issued, such report may be excepted to, the exceptions must be siled, and five pounds deposited with register, whereupon they are argued in court.

If no exceptions are filed, court, upon maffer's report, will diffore injunction, and fometimes, commit clerk in court to Fleet, for taking out such injunction, and make him pay all costs, and sometimes the damages injured party hath sustained, by reason of such irregular injunction.

If (1) injunction is irregular, defendant does not, by applying for time to answer, waive the redress he is insitted to, by means of such irregularity.

6. Perpetual injunctions.

HERE the case requires it, court will grant perpetual injunctions; as in the following instances, viz.

being found, on trial at law, to be no (2) will.

Hot remine december for

^{(1) 2} Vef. Rep. 20.

⁽²⁾ Chanc, Caf, 80.

2. To stay action at law of several persons, where right had been tried and determined by one (1)

3. On bill taken pro confesso, by reason of defendant's contempt, in standing out all process; if same prays injunction to quiet possession, or to stay proceedings at law, court will decree perpetual one.

4. After two (2) verdicts on trials at (3) bar, in favour of plaintiff's title, perpetual (4) injunction was decreed, that right might be quieted in (5) ejectments, as it was in real actions, where verdict was final; and this was affirmed in the House of (6) lords, the bill (7) for this purpose is a bill of peace.

5. Granted (8) against a bond of fifty years

flanding.

6. May (9) be obtained on decree for performance of trults.

Perpetual injunction will the rather be granted, when court directs trial, or where cause against which verdicts are found, is odious in (10) its nature.

Acceptance of bill of exchange becoming void by the law of a foreign country; and the same having been vacated by the sentence of a compe-

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⁽¹⁾ See Vern. Rep. 266.

^{(2) 2} Vern. 401.

⁽³⁾ There had been several country verdicts to the contrary, but the trials at bar were last.

⁽⁴⁾ This injunction operates to quiet possession of plaintiss and his beirs for ever, and all person or persons claiming by, from, or under him; and it is granted upon a plain equitable title. Gilb: Hist. Chanc. 195.

⁽⁵⁾ Party is always at liberty to bring new ejectment at law.
(6) In the case of Lord Bash and Sherwin; and of Leighton and Leighton.
Stra. Rep. 404. Peer Wil Rep. 671.
(7) P. W. Rep. 672.

⁽³⁾ Caf in Chase. Temp. Finch. [Barl Nottingbam] Fol. 77.

^{(9) 2} Ves. Rep. 90. (10) P. W. Rep. 673.

tent court there; and party discharged therefrom in consequence thereof; King (1) Chancellor, granted a perpetual injunction against all proceedings here.

For more of injunction, see 2 Eq. Caf. Abr. 522 to 529.

An order for an injunction on a dedimus.

Master of Thursday the — day of — in the the Rolls. I — year of the reign of his Majesty King George the second, and in the year of our Lord — between A. B. and C. D. complainants, and E. F. defendant.

ORASMUCH as this court was this prefent day informed by Mr. - being of the plaintiff's counsel, that the defendant being served with process to appear to and answer the plaintiff's bill, hath appeared accordingly, but for delay hath craved a commission to answer in the country; and yet in the mean time the faid defendant profecutes the plaintiffs at law for the matters in the bill complained of: It is thereupon ordered that an injunction be awarded against the defendant for stay of his proceedings at law against the said plaintiffs, until the faid defendant shall fully answer the plaintiff's bill, and this court make other order to the contrary; but the faid defendant is in the mean time at liberty to call for a plea, and to proceed to trial thereon, and for want of a plea to enter up judgment; but execution is hereby stayed.

⁽¹⁾ Mos. Rep. 1, 69. 12 Vin. Abr. 87. pl. 9. 2 Eq. Cas. Abr. 476. pl. 2. 524. pl. 7.

Docquel

Desquet upon an injunction on a dedimus.

HE King, and fo forth; To - his counsellors, attornies, folicitors, and agents. greeting. Whereas it is represented to us in our court of Chancery, on the part of A. B. and C. D. complainants, that they have lately exhibited their bill of complaint in our faid court of Chancery, against you the said E. F. defendant, to be relieved touching the matters therein contained; and that you the faid defendant E. F. being ferved with a writ, iffuing out of the faid court, commanding you to appear to and answer the faid bill, have appeared, but for delay have craved a commission to answer in the country; and yet in the mean time, you unjustly (as is alledged) profecute the faid complainants at law, for and touching the matters in the said bill complained of: We therefore, in confideration of the premisses, do hereby strictly command and injoin you the faid E.F. defendant, and all and every the persons before mentioned, under the penalty of two hundred pounds, to be levied on your and each of your lands and tenements, goods and chattels, to our use, that you and each of you do henceforth absolutely defift and forbear from all further proceedings at law against the faid complainants, or either of them, touching any of the matters in the faid bill complained of, until you the faid defendant E. F. shall fully answer the faid complainant's bill, and this court make other order to the contrary; and this you nor either of you are in any wife to omit, under the penalty aforesaid: But nevertheless the said defendant E. F. is at liberty to call for a plea, and proceed to trial thereon, and for want of a plea to enter up judgment; but execution is hereby stayed. Witness the

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the King at Westminster the —— day of —— in the —— year of his reign.

Order for an injunction on an attachmeut,

At the Rolls. Thursday the—day of—in the Master of the Rolls. Sovereign Lord King George the third. Between A. B. plaintiff, and C.D. and E. F. defendants.

ORASMUCH as this court was this prefent day informed by Mr, being of the plaintiff's counsel, that the defendants being ferved with process to appear to and answer the plaintiff's bill, refuse so to do, are in contempt to an attachment for want thereof, and yet in the mean time profecute the plaintiff at law for the matters in the bill complained of: It is thereupon ordered that an injunction be awarded against the faid defendants, for stay of their proceedings at law, for and touching any matters here in question, until the faid defendants shall appear to and fully answer the plaintiff's bill, clear their contempt, and this court make other order to the contrary: But the faid defendants are in the mean time at liberty to call for a plea, and proceed to trial thereon, and for want of a plea to enter up judgment; but execution is hereby stayed.

Docquet for an injunction on an attachment.

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ant, that he hath lately exhibited his bill of complaint in our faid court of Chancery against you the faid C. D and E. F. defendants, touching the matters therein contained; and that you the faid defendants being ferved with a writ, iffuing out of our faid court; commanding you to appear to and anfwer the faid bill, have not obeyed the fame, but are in contempt to an attachment, for not appearing to and answering the faid bill; and yet in the mean time you unjustiv, as is alledged, profecute the faid complainant at law, touching the matters in the faid bill complained of: We therefore, in consideration of the premises, do strictly injoin and command you the faid C. D. and E. F. and all and every the persons before mentioned, under the penalty of two hundred pounds, to be levied on your and each of your lands, goods and charrels, to our use, that you and each or you do absolutely defilt from all farther proceedings at law against the faid complainant, touching any of the matters in the faid bill complained of, until you and each of you shall appear to and fully answer the complainant's faid bill, clear your contempts, and this court make other order to the contrary; but nevertheless' the faid defendants are at liberty to call for a plea. and proceed to a trial thereon, and for want of a plea to enter up judgment; but execution is hereby stayed. Witness the King at Westminster the -day of -in the -year of his reign.

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The form of a writ of injunction.

GEORGE the fecond, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and fo forth; To-his counsellors, attornies, solicitors and agents, and every of them, greeting. Whereas it hath been Q4

If injunction on a ded. &c. (Vide post.)

represented unto us, in our court of Chancery, on the part of _____, complainant, that he hath lately exhibited his bill of complaint into our faid court of Chancery against you the faiddefendant, to be relieved touching the matters therein contained; and that you the faid defendant being ferved with a writ, iffuing out of our faid court, commanding you to appear to and answer the faid bill, * have not obeyed the same, but are in contempt to an attachment for not appearing to and answering the said bill; and yet in the mean time you unjustly, as is alledged, profecute the said complainant at law, touching the matters in the faid bill complained of: We therefore, in consideration of the premisses, do strictly injoin and command you the faid _____, and all and every the persons before mentioned, under the penalty of two hundred pounds, to be levied on your and every of your lands, goods and chattels, to our use, that you and every of you do absolutely defift from all farther proceedings at law against the said complainant, touching any of the matters in the faid bill complained of, until you the said defendant shall have fully answered the said bill, cleared your contempt, and our faid court shall make other order to the contrary: But nevertheless, the said defendant is at liberty to call for a plea, and to proceed to trial thereon; and, for want of a plea, to enter up judgment; but execution is hereby flayed. Witness ourself at Westminster this - day of - year of our reign.

On a dedimus.

Note; In the injunctions mark'd peared, but for delay have craved a complete words are to be left out (vis.) bave cleared your contempt,

Or an order for time.

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peared, but for delay have obtained an order of our faid court for time to answer the same; and yet in the mean time prosecute, &c.

On an insufficient answer.

To which bill you the said defendant have appeared, but for delay have put in an insufficient answer; and yet in the mean time profecute, &c.

On an attachment for want of an answer.

To which bill you the faid defendant have appeared, but have not answered the same, and are in contempt to an attachment for want thereof; and yet in the mean time prosecute, &c.

An injunction to flay committing waste.

GEORGE the second, &c. To A.B. and his workmen, labourers, servants and agents, and each and every of them, greeting. Whereas it hath been represented unto us in our court of Chancery, in a certain cause there depending, wherein C.D. is complainant, and you the said A.B. are defendant, on the part of the said complainant, that &c. [as in the order]. We therefore, in consideration of the premisses aforesaid, do strictly injoin and command you the said A.B. and your workmen, labourers, servants and agents, and all and every

every one of you, under the penalty of one thoufand pounds, to be levied upon your and each and every of your lands, goods and chattels, to our use, that you and every one of you do from henceforth altogether absolutely desist from felling or cutting down any timber or other trees, standing, growing or being in or upon the premisses in question, or from committing or doing any other or further waste or spoil in or upon the said premisses, or any part thereof, until our said court shall make other order to the contrary. Witness, &c.

A Special injunction to stay execution till the bearing.

GEORGE, &c. To C. D. his counsellors, attornies, folicitors and agents, and every of them, greeting. Whereas it hath been represented unto us in our court of Chancery on the part of A. B. complainant, against you the said C. D. defendant, that the complainant being, &c. [fet forth the allegation as in the order] therefore it was prayed that the complainant might have an injunction for flay of your the faid defendant's proceedings at law until the hearing of the cause: We therefore, in consideration of the premisses aforesaid, do strictly injoin and command you the faid C.D. and all and every the perions before mentioned, under the penalty of one thousand pounds, to be levied upon your and every of your lands, goods and chattels, to our use, that upon the said complainant's giving unto you the faid defendant C. D. judgment on the faid bond, with a release of errors (and consenting not to bring any writ of error) subject to the order of our faid court, that you and every of you do absolutely defift from taking out execution against the faid complainant until the hearing of this caule by our faid court of Chancery. Witness, &c. A Speur

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Aspecial injunction to stay the defendants from copying, engraving, &c. and selling of prints, pursuant to an act of parliament 8 Geo. 2. chap. 13,

GEORGE, &c. To _____, and also to their and every one of their fervants, workmen and agents, to all and every of them greeting. Whereas on the --- day of ----, and on the - day of - last, it was alledged to us in our court of Chancery, by counfel on behalf of and his wife, plaintiffs, against you the faid ----, defendants, that by an act of Parliament made in the eighth year of our reign, it is (amongst other things) enacted, That from and after the twenty-fourth day of June, one thousand seven hundred and thirty-five, every person who should invent and design, engrave, etch or work in metzotinto or chiaro obscuro, or from his own works and inventions should cause the same so to be done, should have the fole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, unless by the consent of the proprietor first had in writing, and signed in the prelence of two or more credible witnesses, under the penalties in the faid act particularly mentioned: That the faid plaintiff -, fince the faid twentyfourth day of June one thousand seven hundred and thirty-five, hath with great labour and expence invented, deligned, etched and engraved about --prints, being the representations of, &c. And on the day of 1737. published four of the faid prints, representing and ____; And that notwithstanding the said act of Parliament, you the faid defendants have copied, published

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published and fold the faid four last mentioned print, as by the affidavit of the plaintiff - read, ap peared; to be relieved wherein, the faid plaintiff have exhibited their bill in our faid court of Chancery against you the faid defendants, as by the Sir clerks certificate appeared, and you the faid de. fendant-having put in your answer thereto, thereby admit to have fold and published the faid prints, but fay they were fent to you by the faid defendant ____, and that as foon as you was informed of the faid plaintiff's right, you fent them back again; We having regard to the matters aforesaid, and on reading affidavits of notice of the faid motions, do therefore firially command and injoin you the aforefaid defendants-- and your fervants, work. men and agents, and all and every of you, under the penalty of one thousand pounds, to be levied upon your and each of your lands, goods and chattels, to our use, that you, and each, and every one of you, do from henceforth altogether defift from copying, engraving, etching, working, publishing and selling all or any of the aforesaid prints, until the further order of our faid court of Chancery. Witness, &c.

A writ of injunction for the defendant to deliver possession of lands to the plaintiff, pursuant to a decree.

GEORGE the third, &c. To C. D. and all other person and persons whatsoever, who are in possession of, or have or claim any right, title or interest whatsoever of, in or to all or any part of the messuage, lands, tenements or premisses in question, greeting. Whereas it hath been represented to us in our court of Chancery, in

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in a cause wherein A. B. and E. his wife are complainants, and you the faid C. D. are defendant, that by the decree made in this cause it was ordered, that you the defendant C. D. should deliver possession of the premisses in question, and all deeds and writings in your custody or power relating thereto, to the faid complainants; that you the defendant, who are in poffession of the messuage and lands in question, was served with a writ of execution of the faid decree, and have been required to deliver possession of the messuage and lands, which you refuse to do; and a commission of rebellion having been made out against you the defendant, and returned, that you the defendant are not to be found, it was ordered, that an injunction be awarded against you the faid defendant, to injoin you to deliver possession of the faid meffuage and lands to the faid complainants. pursuant to the faid decree: We therefore, in consideration of the premisses, do strictly injoin and command you the faid defendant C. D. and all and every other persons before named, under the penalty of one thousand pounds, to be levied upon your, each and every of your lands, goods and chattels, to our use, that you, each and every of you, do deliver the possession of the said messuage. lands and premisses, and of every part and parcel thereof, to the faid complainants A. B. and E. his wife, pursuant to the said decree: And hereof fail not at your peril. Witness, &c.

(10thly) Of Certiorari's.

A Certiorari is a writ out of Chancery to an inferior court of record to remove and certify the record of a cause.

Two plaintiffs here sue for lands in the County Palatine of Durham; one of them lives in Middlesex, dlesex, and the other is an old infirm man, and unable to follow the suit; therefore a certiorari was granted to the Chancellor of Durbam to certify the proceedings depending before him into this count Chan. Rep. 68. [Vide post certiorari bills.]

A writ of certiorari.

GEORGE the third, &c. To the Mayor and Aldermen of London, greeting. We willing, for certain causes, to be certified of and upon a certain petition or bill of complaint before you, against C.D. and E.F. at the suit of A.B. lately exhibited and now depending; commanding you that the petition or bill aforefaid, with all things touching the fame, by whatfoever name the parties aforesaid, or any, or either of them, are or is fet down, before us in our Chancery, truly, fully and exactly, as in your custody the now remain, under your feals distinctly and openly ye fend immediately, and this writ, that further thereof we may cause to be done, that which of right ought to be done. Witness ourself at Was minster the -- day of in the our reign.

Note; This is an open writ, upon a double

5s. 6d. stamp.

Indorse, By the Lord High Chancellor of Great
Britain.

In the matter of C. D. and another.

21 Feb. 1767. This writ allowed by the count [meaning the Lord Mayor's court.]

The answer of Sir — , Knt. Lord Mayor, and the Aldermen of the City of London.

(tithly) Procedendo.

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Procedendo is a writ directed to the judge of an inferior court, requiring him to proceed in a cause removed hither by certiorari, &c. on the plaintiff's fuggestion not being sufficiently proved. Also it is used where the cause is stayed for a time by a supersedeas. and you of therely or berdebei ever titen he may give

that writ may be dicharged, but t (12thly) Ne exeat regno. no shows

TS a writ to reflrain a person from going out of the kingdom without the King's licence, or leave of this court. wo mined an amobarial ada no

This writ was formerly called a statute writ, and then sparingly made use of; but it is now considered a remedial writ, and, as fuch, become a common process of the court; it issues at commencement of fuit, when the plaintiff apprehends defendant will fly to foreign parts, and thereby endeavour to avoid the justice of the (1) Nation; it is granted at the instance of the plaintiff, by his application to court, on motion or petition, and affidavit, that defendant is going beyond sea, and of money (2) due to plaintiff, and which, if defendant should have an opportunity of leaving the kingdom, plaintiff would be in danger of lofing; this writ is always marked on back thereof, with fum fworn to, as a guide to sheriff (to whom only it is generally directed) to take sufficient surety by bail bond, for yielding obedience thereto, in that defendant will not depart the Realm, without per-

^{(1) 2} Chanc. Caf. 245.
(2) By flanding order in Lord Chanc. Cowper's time, oath is to be made

million of the court first obtained; and on defend, ant's refusal to enter into such bond, sheriff mat

commit him to prison.

When party is (1) taken, he must give bond to Master of the Rolls, in such penalty as writ require for yielding obedience thereto, or fatisfy court by answer, affidavit, or otherwise, that he hath no defign of leaving kingdom, or that he is not indebted to plaintiff in any fum of money what ever; then he may give notice, and move coun that writ may be discharged, and upon hearing counsel on both sides, court will either discharge (2) or continue same.

This writ hath been granted to flay defendant from going to (3) Scotland; for though it be not out of the kingdom, yet being out of the reach of the process of the court, it is within same (4) mischiel. e

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A writ of ne extat regnum ought not to be grane ed without (5) a bill first filed whereon to ground fame, nor where the demand is intirely at law; for there the plaintiff has bail, which he ought not to have both at law and in equity. 3 P. Wil. Ra 212. Ex parte Brunker. Vide Prec. Chan, 171.

(1) Note; It bath been held an abuse of this process, to break opendom and take party in bed; yet court, for this cause, would not order him to

be fet at liberty.

CONTRACT

of the realm, or to Scotland.

⁽²⁾ Modern practice is for desendant to give security to abide decre prounced on hearing, before court will discharge writ, which security is the by recognizance before Master, as all other securities are. So that deter ant taken by Sheriff on a writ ne exeat Regno, seems obliged to enter into # less than three different bail-bonds, before he can be discharged or set at b berty, viz. in one to Sheriff, in another to his Honour of the Rells, and a third to a Mafter in Chancery.

(3) Note; In this case, condition of recognizance must be, not to so at

^{(4) 2} Salk: 702. 3 Mod. 127, 169. 4 Mod. 179. P. Wil, Rep. 269
See Caf. Temp. Talbot; Chanc. 198.
(5) That this writ lies for a private matter, without bill filed. See Chancard. 116. 2 Chanc: Rep. 19. F. N. B. 85. As for client, on his folicitor's life on taxation being reported overpaid 60 l; folicitor being about to go bond fee. Prec. in Chanc. 171.

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This writ hath been granted in Chancery to stop one from gong beyond sea to avoid a sentence in the ecclesiastical court. Sir Jerom Smithson's case. 2 Vent. 345.

A person having my money, and being about to go out of the kingdom, I may, by suit, stay him here till he hath given security to pay me: Vide Stat. 5 Rich. 2. c. 2. Crompt. Jur. 64. Toth. 136.

If the person, against whom the writ issues, answers, and denies the equity of the bill, and if the
court upon hearing counsel on both sides, see
no cause to the contrary, the writ will be discharged.

A furety in a ne exeat regno is not to be discharged upon the defendant's putting in his answer, nor even after a decree against the defendant, and commitment for 19,000 l. decreed against him; for if there is no danger of the defendant's going beyond sea, being in prison, then the surety is in no danger. Preced. Chan. 230.

The form of the writ ne exeat regno.

of Great Britain, France, and Ireland, King, defender of the faith, and so forth. To our Sheriff of Middlesex, greeting. Whereas it is represented to us in our court of Chancery, on the part of A. B. complainant, against C. D. defendant (amongst other things,) that he the said defendant is greatly indebted to the said complainant, and designs quickly to go into parts beyond the seas (as by oath made on that behalf appears,) which tends to the great prejudice and damage of the said complainant: Therefore, in order to prevent his injustice, we do hereby command you that you do Vol. I.

(13) Homine Replegiando.

THIS writ is feldom used. It lies against one who clandestinely takes or conveys away, or keeps in his custody another person against his will or consent. It is obtained on affidavit of the matter, and petition or motion to the Lord Chancellor: And it is sometimes brought where infants have been taken out of the custody of their guardians, &c. and this court, 'tis said, may proceed herein by order without writ.

An infant was fent into France by his uncle, without the confent of the guardian; a Homine Replegiando was awarded, and the uncle ordered to fend for the boy back again. 2 Chan. Ca. 237.

A wife cannot, either by herself, or prochein amy, bring this writ against her husband, for he has by law a right to the custody of her, and he may, if he thinks fit, confine her, but he must not imprison her; if he does, it will be good cause for her to apply to the spiritual court for a divorce propter sevition.

writ de Homine Replegiando are such as cannot be maintained by a wife against her husband. Atwood v. Atwood, Gilb. 149. Vide Fitz-Gibb. 166. where several persons were appointed guardians of a young woman, and one of them got her (being nine years of age) married; the court granted this writ against the guardian and the husband, but as to the young woman the court made an order for the guardian and husband to produce her in court on a day certain.

(14) Habeas Corpus.

THIS writ is obtained either upon motion or

petition, but commonly on motion.

It is generally used to bring up prisoners to shew cause why they do not appear to or answer a bill, and in order to a party's appearing or answering and clearing his contempts, so that he may be discharged, or such order be made touching the matter, as the court shall see cause.

It is directed to the Warden of the Fleet, Marhal of the King's Bench, or Sheriff, or some other person where the party is in custody, to bring into this court the body of the person in custody at the

return of the writ.

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It is served by delivering the writ itself under seal to the Warden, Keeper, or other person in whose custody the party is, and keeping a copy thereof: And if he obey it not, then issues an alias, and so a pluries, and afterwards an alias pluries; which is he yields no obedience to, nor makes some return thereupon in excuse, and which the court shall think sufficient, then, if he be an officer or minister of this court, and it be touching a cause depending here, the court will punish his contempt.

R 2 And

And if it be for a matter at large, and the Keeper of the prison obey not the writ, the party has his

remedy by the Stat. 30 Car. 2. cap. 2.

And a prisoner in a county gaol, or in B. R. being in contempt for not performing a decree of this court, may be brought up by this writ, and turned over to the *Fleet*, whence he is not to go till he has obeyed the decree. 2 Chan. Rep. 151, 192.

And where a prisoner is brought up by babeas corpus, and turned over to the Fleet prison, and there lies in contempt for not performing a decree of this court, the court, upon motion, will ordera fequestration against him to fequester his personal estate, and the rents and profits of his real estate. until he shall have fully performed the decree, cleared his contempt, and the court take other order to the contrary: And generally he must not only fully perform the decree, but pay all the costs relating to the fequestration, and the fees of the fequestrators, which are 6s. and 8d. a day a-piece, fo long as they remain in possession of the estate fequestred. And upon a personal estate being sequestred, and the decree remaining unperformed, the court will order it to be fold for the best price by the fequestrators, and the money arising thereby to be paid to the party, in part of what is decreed to him; and nevertheless the fequestration to be continued as to the fequestrators fequestring the rents and profits of the real estate, until the party has fully performed the decree, &c.

A prisoner in execution, brought up to this court by this writ, shall be remanded to the prison

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from whence he came.

But where a prisoner is in execution, you may move the court for an babeas corpus cum causis directed to the Sheriff; and the prisoner being brought up by such writ, the court orders him to be turned over to the Fleet prison, where he is to remain

remain charged with such execution, and such other matters as he was before charged with in such other prison from whence he came, until he be not only fully discharged thereof, but also fully perform the order or decree of this court, whereby he was turned over to the *Fleet* prison.

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Habeas corpus to the Warden of the Fleet.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth. To the Warden of our prison of the Fleet, or his deputy there, greeting. We command you that you do on the day of — bring before us into our court of Chancery, wheresoever it shall then be, the body of — by whatsoever name, or addition of name he is known or called, who is detained in our said prison in your custody, to perform and abide such order as our said court shall make in this behalf; and hereof sail not; and bring this writ with you. Witness ourself at West-minster the — day of — in the — year of our reign.

(15) Supplicavit.

THIS is a writ wholly appertaining to, and is made out by, the Prothonotary of Chancery; it is granted upon complaint and oath of the party, where any fuitor of the court is abused, and stands in danger of life from another suitor. The contemner is taken into custody, and must give bail to the Sheriff, and if he moves to discharge the writ, the court hears both parties on affidavit, and continues it or not, as the case appears. If they order the contemner to give security

rity for his good behaviour (for this writ is in nature of Lord Chancellor's warrant to apprehend a man for breach of the peace,) he must do it by recognizance before a Master, who must be in the commission of the peace; and he is to find sureties for good behaviour. If he beats or assaults the party a second time, the court will order the recognizance to be put in suit, and permit the party to recover the penalty, for the recognizance is never to be sued but by leave of the court. But this proceeding very rarely happens.

One that was taken on a fupplicavit, and continued a year in prison without any fresh threatening, ought to be discharged, for nothing is more oppressive than indefinite imprisonment, 3 Will.

Rep. 103.

CHAP. III.

Of persons favoured in equity,

TNDER this general head may be comprehended infants, or minors, ideots, lunaticks, guardians, prochien amy's, trustees, seme coverts, heirs, executors, administrators, and also paupers.

With respect to infants, let us consider, first, how they sue or defend, and are prosecuted; and how

far they are favoured in equity.

(a) An infants pays no cofts on a bill filed by his prochein amy. Stran. 708. 2 P. Will. Rep. 297 Sel. Caf. in Chanc. 49.

Of Infants. (a)

A LL persons before the age of twenty-one, are here called infants.

An infant may sue in this court as plaintiff by

his prochein amy, or next friend; but if he defends

a fuit, it must be by a guardian, assigned or appointed him by the court; and his answer is taken

upon the oath of the guardian.

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Where lands in fee descend on an infant, the parol shall demur in equity as well as at law, because an infant is equally incapable of desending himself in one court as in the other; and the equitable affets may be of as great value as the legal; but a special occupant, under the statute of (1) frauds, (1) 29 Car, shall not have his age, so as to make the parol de-U. c. 34 mur. 3 P. Wil. Rep. 368.

Where an infant exhibits a bill, there is no occasion for a guardian to be affigured him by the court; but he exhibits his bill by some proper perfon, his prochein amy, or next friend, who is liable to pay the costs of the suit to the defendant, in case the court orders any costs to be paid: But where the infant is defendant, the guardian assigned by the court is to be called by that name; yet if the guardian be not so called, though it is at law, where the infant is plaintiff, it is no cause of demurrer.

If an infant, being served with a subpana, will not appear to a bill, on affidavit of ferving the subpana an attachment iffues against the infant, and counsel moves upon the attachment for an order for a messenger to bring the infant into court; and being brought into court, and no one offering on his behalf to be affigned his guardian, the court usually orders the senior Six clerk not towards the cause. to be affigned his guardian, to appear to the faid bill, and answer and defend the said suit. Also if an infant appears to a bill, and refuses to answer, an attachment iffues against him for not answering; but he cannot be arrested upon the attachment; but counsel must move the court upon the attachment for a messenger to bring the infant into cout, and the court will make fuch order as aforefaid But commonly some relation or friend of the infant R 4

infant prays the court to be appointed guardian for the infant, to answer and defend such suit, which the court orders accordingly; and such answer must be always sworn by such guardian. And if the court decrees a guardian to perform a decree on behalf of the infant, the guardian is obliged to perform it, and may be committed to the Fleet for disobedience of such decree.

It is doubted whether this can be done against a Peer of the realm who is an infant, and whose per-

fon is facred.

The interest of infants is very much regarded and taken care of in this court.

Any person may, as prochien amy, exhibit a bill in the name of an infant. Preced. in Chan. 376.

This had been moved the two preceding feals. and was now moved again. The case was, that the defendant Sir Walter C. & al. were trustees of an advowson by settlement, upon trust, to present such person as the heir of J. S. should, by writing under hand and feal, nominate, and in default of such nomination, to present in their own right as they should think fit. The church becomes void, and the heir of F. S. is an infant of about nine months old; the trustees contend that the infant is not capable of nominating by writing, &c. and that therefore they have right to present proprio jure, &c. Bill was brought by the infant to compel the truflees to present according to his nomination, & Injunction was granted as to defendants to restrain them from presenting without leave of the cour, and an order that the Archbishop of York, (the Ordinary) should not admit, &c. And the question now was, Whether this order would prevent the Archbishop from collating when the fix months for presenting expired; or that there should be a particular order to restrain the Archbishop from collating, &c.? And after a good deal of debate,

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hate, it was agreed by Lord Chancellor, & omnes, that the order to prevent admission was sufficient to prevent collation; because collation was admission. institution, and every thing but induction : And at law, upon a quare impedit and ne admittas, the Ordinary cannot collate or take advantage, and this order is in its nature an English ne admittas, and as to the question, whether the Bishop in this case could take advantage of lapse or not, Lord Chancellor held clearly that he could not; for as at law lapfe was prevented by a ne admittas, so when the title is in equity, the Bishop is equally restrained and prevented of laple, by an order not to admit, pending the dispute in this court, and this was observed to have happened several times before, in the case of mortgagor and mortgagee, where the mortgagee having the legal title pretended to present, whereas in equity the presentation (or the right of nomination) belongs to the mortgagor. As to the main point, Lord Chancellor feemed strongly to incline, that the nomination by the infant was good; for by law infants, of never to tender age, are to pretent, and theirs, and all other presentations, are usually in writing, and cannot be otherwise when the infant cannot speak. But a difference was endeavoured to be put, that here was a particular method prescribed by the trust, viz. by writing under hand and feal, &c. which must suppose the person. who created the truft, did intend the heir to nominate and should exercise a discretion, and be capable of knowing as well as executing a writ-4 Vin. Abr. 550. pl. 10. Arthington v. Sir Walter Coverly, & al'.

In the above determination my Lord King has adopted Lord Chief Justice Coke's opinion in 3 Inst. 156. Dean Watson in his Compleat Incumbent, folio 140, has adopted the same opinion; so has also Dr. Burn in his Ecclesiastical Law, 410. 98. Notwith-

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withstanding these respectable authorities, it has been faid, and it feems to be the most reasonable method, that if the heir be within the years of difcretion, the guardian shall present. Cro. Jac. 90. for no moral act can be imputable to an infam within years of discretion; and the notion of make ing an infant act by guiding the pen in his hand is abfurd, and the reason given by Lord Coke why the guardian shall not prefent; is not easily to be underflood, viz. that firmony is odious, therefore a guar. dian shall not present, because he can take nothing for which he may account to the heir: Admit this will guiding the pen in the infant's hand prevent fimony? or can there be any effential differencebe tween allowing the guardian to guide the infant's hand, and permitting him to fign his own name!

An infant may, by his prochein amy, call his guar. dian to an account, even during his minority : And if a stranger enters and receives the profits of an infant's estate, he shall, in this court, be looked upon as a truftee for the infant! 2 Vern. 342.

And if a man intrudes upon an infant's estate, he shall receive the profits but as guardian, and the infant shall have an account against him as such. 1

If a man receives the profits of an infant's estate, during his minority, and for many years after he comes of age, before any entry is made upon him; yet he shall account for the profits throughout Pafeb. 1699. Eq. Caf. Abr. 280. pl. 2. Tallop and

Holworthy.

And an infant cannot be foreclosed, without a day to shew cause (which is commonly six months) after he comes of age; but the proper way in such a case is to decree the lands to be fold to pay the debts, and that will bind the infant. 1 Vern. 295. But if there be a mortgage which depends upon a disputable title, so that no money can be had by an affign.

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affignment of it over, this court will not decree an infant to be foreclosed till [fix months after] he

comes of age. 2 Vent. 351.

Decrees are but very rarely made against infants without a day to shew cause (which is commonly six months) after they come of age. But is lands are devised to be sold for payment of debts, they may be decreed to be sold without giving an infant heir a day to shew cause, for nothing descends to him; but otherwise if he be decreed to join in the sale. Cooke and Parsons, 2 Vern. 429. Or where the legal estate is in trustees, and an execution of the trust is to be directed, there is no occasion to give the infant a day to shew cause. MSS. Ca. in Temp. Thoroton against Blackbourne, 12 May 1731. Chan. King C. 2 Kel. 7.

A decree against an infant nifi, &c. is an absolute

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And when he comes of age, he cannot set it aside by original bill, unless for fraud and collusion between the plaintiff and his guardian, but he may amend his answer, and file a bill of discovery to that end. Moseley 308.

It is a good cause why a decree should not be made absolute against an infant, after he comes of age, that he has put in a new answer. Moseley 313.

If an infant answers by guardian, and a decree is against him without a day to shew cause, such answer shall not be read, or admitted as evidence against him when of age; but otherwise of a superannuated defendant, who puts in an answer by his guardian, Trin. 1704. Eq. Cas. Abr. 281. pl. 5. Cb. Pre. 229. Sir Richard Leving and Lady Caverly. An infant, when he comes of age, may put in new answer, and make new defence. 1 Will. Rep. 504. 2 P. Will. Rep. 401. S. P.

The court enlarged the time for a defendant to hew cause, after he came of age, why the decree should

should not be made absolute, till he plaintiffs in the first cause had put in an answer to a bill of discovery he filed against them, after he came of age,

Moseley 203.

The true reason why an infant's answer is not to be read against him, is because, in reality, it is not the answer of the infant, but of the guardian, who is sworn, and not the infant. And the infant may know nothing of the contents of the answer put in for him by his guardian, or may be of those tender years as not to be able to judge of it. 3 P. Will, Rep. 237.

An infant's answer by his guardian is not evidence against him, because the infant is not sworn; and it is only for making proper parties. Carth. 79. And where an infant is defendant, the service of the subpana to hear judgment must be on the guardian, and not on the infant. 2 P. Will. Rep. 643. Taylor

and Atwood.

But where a defendant puts in an answer to a bill brought by an infant, who does not reply to it, in fuch case, it seems, the answer must be taken to be true, in regard the defendant, for want of a replication, is deprived of an opportunity of examining witnesses to prove his answer; and he ought not to fuffer for fuch omission in the plaintiff; fo ruled at the Rolls, with some warmth, by Sir Joseph Jekyll, Thurston and Decker against Nutton & Ux', Trin. 1733. Williams, the plaintiff's counsel, much oppoled the reading of the answer; for that the plain, tiff, being an infant, could admit nothing; and it might be very mischievous, if by reason of the neglect of the plaintiff, the infant's guardian, or proebien amy, in not putting in a replication to the antwer, fuch answer should be read and admitted to be true, though never fo detrimental to the infant's inheritance. Ideo quare, 3 P. Will. Rep. 237.

This court will not suffer an infant to be prejudiced by the neglect of his trustees. Mich. 1699.

Allen and Sayer, 2 Vern. 368.

With the approbation of the infant's relations, this court may allot him maintenance out of a trust estate, though there be no provision for it in the trust. Trin. 1691. Englesield and Englesield, 2 Vern. 236.

And this court, upon the application of guardians, will fettle the maintenance of infants. 3 Chan.

Ca. 136.

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It may not be improper to observe in this place, bow far infants are bound here, or less favoured than at law.

Infants may be further bound here than at law. And that they have been obliged to answer in this court, when the parol should have demurred at law, Toth. 108. Sed Vide 1 Vern. 137, 428.

The answer of an infant may be referred for scandal; but it being upon the oath of the guardian, he, and not the infant, shall be liable to pay the costs, or rather the counsel who signed such answer.

A sequestration may issue against an infant. 2

Chan. Ca. 162.

And an infant shall be bound by conditions in fact, and such conditions as he can perform in equity as well as in law. 1 Mod. 300. 2 Vern. 342:

Note; An infant is bound by all conditions, charges and penalties, in an original conveyance, whether he comes to the estate by grant or descent.

1 Inft. 233. b.

And a gift to an infant, on condition, binds him as well as another person. Trin. 1706. Scot and Houghton. 2 Vern. 560. See more 2 Vern. 232, 479.

And an infant trustee, by Stat. 7. Ann. c. 19. may be obliged to convey; but otherwise where he takes an interest in the land, as where lands are given to

an infant charged with the payment of the money, the court will not order him to join in the fale, &c. till he comes of age. MSS. Ca. Anon. Temp. King

C. Hil: 6 Geo. 2.

Though no proceedings may be against an infant on a judgment, or statute at common law, yet it is otherwise in this court. 2 Chan. Ca. 164. 1 Dam. 260. 8. S. P. Also an infant may be here com. pelled to give a discharge of a debt due to and received by him. And in some special cases he shall be concluded by his agreement. As a father being about to convey some of his lands to his younger fon, the elder fon promifed to give the younger 100 %. if the father would forbear it; in this cale the elder, being an infant, was ordered to perform it; but regularly, though an infant be twenty years old, and makes a contract never fo much to his advantage, &c. yet the court will not conclude him, nor make an absolute decree against him, though by his own consent, or the consent of parents, &c. except in some special cases upon the merits of the cause.

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Proceed we now to see what acts of infants are

good, void, or voidable.

If an infant fells lands for money, with which he purchases other lands, yet this sale made by him shall not be helped in this court, because he is disabled by a maxim in law. 16 Fac. 1. Dodderidge and

Hutton, 1 Rol. Abr. 376.

But if an infant makes an agreement, and receives interest under it after age, such agreement shall be decreed against him. Hil. 1682. Francklin and Thornebury, 1 Vern. 132. So if he exchanges lands, and continues in possession after age, he shall be bound by it. 2 Vern. 225. If an infant desires that lands subject to a trust for paying younger children's portions may not be fold, and offers by his answer to settle other lands for raising the portions, he

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he shall be bound by fuch offer, if the other fide re thereby delayed; and if he does not, immeditely after age, apply to the court to retract his ofer, and amend his answer. Cecil and The Earl of Salisbury, 2 Vern. 224. And if an infant borrows fum of money, for which he gives a bond, and levices his personal estate (being of sufficient capaity) for the payment of his debts, particularly those he had fet his hand to, this bond-debt shall be paid. 651. Hampton and Lady Sydenbam, Nel. Chan. Rep. 8vo. 55.

A decree shall bind an infant where there is a Lord Guernsey and Rodbridges, nutual benefit. Gilb. 3, 4. I Vern. 132. 2 Vern. 224, 225.

Chan. Ca. 256. Abr. Eq. Ca. 282, &c.

Where there is a decree nisi causa against an inant, on his coming of age, and before the decree made absolute, he may put in a new answer. I Will. 104. Moseley 68.

If an infant executor affents to a legacy, fuch ffent shall be good, if there are sufficient affets besides to pay debts; otherwise not. I Chan. Ca.

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But an infant executor, before seventeen, cannot bind himself by his affent to a legacy. 5 Rep. 20. Cro. Eliz. 719. And an infant may administer at eventeen, but cannot commit a devastavit till of full age. I Vern. 328. —— Where an infant is nade executor, administration must be granted, cum estamento annexo, to his guardian or next friend, gurante minoritate; but the administration ceases when the infant is seventeen years old; so if an inant executrix, before seventeen, takes a husband of full age, the administration immediately ceases: Rep. 29. 6 Rep. 67. 2 Inft. 398. But if an inant is intitled to an administration of the goods of n intestate, administration must be granted to anoher till he is twenty-one; because a miner cannot admios & 10 th enter (a) On a

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ferred to a

enter into a bond, with fureties, to administer faithfully, as required by the flatute 22 & 23 Car. 2. An infant female may make a will, and dispose

of her personal estate at twelve; an infant male at fourteen, if proved to be of discretion. 2 Vera 469. And an infant may be a truftee. 2 Vers. motion made 561, And by 7 Ann. (a) cap. 19. infants feised or possessed of estates in fee in trust, or in mortgage, cutor of the may make conveyances of fuch estates. Infant cannot be charged on a contract, nor as bailiffs, nor mafter, to see for goods to carry on a trade; and therefore, when whether the made factors, security should be taken from their

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within the act, 7 An. c. 19. The mafter reported him to be a truftee within that at. upon which report an order was made, that the heir fould affign over the mortgage, to find persons as the executor should appoint. And now a motion was made for the descudant to set aside the report, because the heir was not a trustee for the executor by the meaning of the act, and because the reference was made on a motion, whereas the flatute require it hould be by petition.

Mr. Solicitor General for the executor.

The constant practice is, to pray a reference by motion, as well as by petition. Petition originally fignified a bill, but a motion is a petition, and the word is to be understood of any

fummary way, in diffinction to the proceedings by bill and answer.

But they say, this case is not within the statute, because the heir of the mortgage in trustee for his executor, only by implication of law. But implied trusts are taken notices by acts of parliament, as by the flatute of frauds and perjuries, and it was adjudged by your lordship in the case of Bertie v. Vernon, that the heir of the vendee was a trustee within this act, for the person who paid the purchase money. The heir of the mortgages its trustee both for the executor of the mortgages, and for the mortgager, and is doubly within the flatute, as a mortgagee and truftee too, and he is bound to convey, either at the pertion of the mortgagor, or of the Ceffuy que truft.

Lord Chancellor.

A motion is a petition, not reduced into writing, and presented, and I do not knowthat the flatute requires those circumflances, and the general practice is to pray a reference by

motion; and if the order is not according to the flatute, it is void, and without suthonly.

There can be no doubt, but a mortgage in fee descends on the heir of the murtgage, but it is as certain that the money belongs to the executor, so that the heir is only his truth; and this was the very inconvenience the flatute was made to remedy, that the morteger might be willing to pay the money, or the executor might want it; and that in either call, they should not be obliged as formerly to wait the full age of the beir. Moseley 197. pl. 109.

> For the general jurisdiction and care of this count over infants, see 3 Chan. Ca. 136. where it is declared, that guardians are appointed by writ for infants, and one or more guardians jointly.

> See Stat. 29 Geo. 2. c. 31. whereby infants may furrender leases in order to renew them, under the Of direction of a court of equity.

Of ideots and lunatics.

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THE care and commitment of the custody of ideots and lunaticks, and of their persons and estates, is a peculiar jurisdiction of the Great Seat granted under the Royal Sign Manual, by virtue of the prerogative of the crown; and the Chancellor does not act in it quaterns Chancellor; and no appeal lies from an order of the Lord Chancellor, touching lunaticks, to the House of Lords, but only to the King in counsel. 3 Will. Rep. 107, 108.

An ideot is a natural fool, or one of unfound mind and memory from his nativity.

A lunatick is a person who is sometimes of good and sound memory and understanding, and sometimes not; aliquando gaudet lucidis intervallis.

If an inquisition find that such a one was an ideot for eight years last past, such inquisition is void; for an ideot must be found to be so a nativitate, otherwise it is not an ideot, but a lunatick only. Vern. 12. vide 3 Mod. 43. S. C. in B. R. where this inding was held sufficient; for the inquisition finding the party an ideot, the adding eight years was uperstuous.

Ideots, after they are so found, are to sue and aniver by the King's attorney, &c. But lunaticks generally sue and answer by their committees; and if the lunatick be not named a party in the bill, or nformation, by the attorney, it is commonly good ause of demurrer. 1 Chan. Ca. 153. But if the lill, in nature of an injunction, is to be relieved gainst some act done during his lunacy, he must ot be named a party, for that were to stultify himils. 1 Chan. Ca. 113.

Generally a lunatick ought to be made a party; ut in the case of Jerome Smith it was over-ruled, Vol. I.

and said, the reason was, that he might not stultify himself; for if he had been a party, it had been to stultify himself, which the law does not admit. Ibid. And see I Chan. Ca. 153. Woolrick's case. A bill was brought by the Attorney General, in the nature of an information, for the benefit of a lunatick, as in the case of Smith; and the defendant demurred, because the lunatick was no party, which was ruled a good demurrer; but that in the case of an ideot it is otherwise. A lunatick may recover his understanding, and then he may dispose of his estate.

Smith's case was to be relieved against an act done by the lunatick, at the time he was so: But in Woolrick's case the bill was to be relieved upon a marriage agreement, for the benefit of the lunatick, before he was a lunatick, which did not tend to

stultify himself, as the other did.

One, through a great age being deprived of his memory, and become almost non compos mentis, was admitted to answer by his guardian in regard the demand in question was but small; but had the value been considerable, the regular way had been to have taken out a commission of lunacy, and have gotten a committee assigned, by the Lord Talbot. Mich. 1733. Anonymous, 3 Will. Rep. 111.

The king, or his committee, has an ideot's lands in their own right, by Stat. Prærog. But of a lunatick's lands they are only trustees for the benefit of the lunatick; and therefore it seems a lunatick must be named a party; contra of an ideot, for he

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can have no right in himself.

The custody of lunaticks is not a matter of right, but of prudence. Lady Cope's case, 2 Chan. Ca. 239. It shall never be committed to any that will make gain of it, or who is concerned to outlive the lunatick, or his next heir, as being nearest of blood, and intitled to the administration; and the allowance must be liberal and honourable.

The committee of a lunatick has an estate but during pleasure, and therefore cannot make leases, nor any ways incumber the lunatick's estate, without special order of this court, where the profits are not sufficient to maintain the lunatick. Mich. 1684. Foster and Merchant, 1 Vern. 262. Nor can the committee invest the profits of a lunatick's estate in the purchase of lands. Mich. 1690. Audley and Audley, 2 Vern. 192. Vide Stat. 15 Geo. 2. c. 30. prohibiting lunaticks marrying, pending a commission.

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If a man forcibly takes away a lunatick whilst she is under commitment, and marries her, it is a contempt, and the court will commit him; but if the marriage is afterwards held good in the spiritual court, (as it may be by being consummated in one of her lucid intervals) and if upon inspection it appears that she is restored to her understanding, the husband shall be discharged, and the commission of lunacy vacated. Trin. 1702. Eq. Cas. Abr. 278. Gilb. Eq. Rep. 89. Pr. Ch. 212. See id. 203. Mrs. Asher's case.

Bill may be brought in this court, for specific performance of agreement, decreed against one since become lunatic. Vez. Rep. 82.

What acts of ideots or lunaticks, are good, void, or voidable, vide 1 Rol. Rep. 1 Chan. Ca. 113, 153. 2 Salk. 427. S. C. 3 Lev. 284. 2 Salk. 576. S.C. Vide 2 Chan. Ca. 103. 2 Vern. 189. 2 Vern. 678. Vide 2 Vern. 414. 1 Vern. 155. 1 Vern. 105.

Persons being ideots, lunaticks, or non compos mentis, who are seised or possessed of estates in see, or for life or years, in trust, or by way of mortgage, are enabled to make conveyances or assignments of such estates, in such manner as the Lord Chancel-or shall direct, on hearing of the persons for whom

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fendants moved that fuch ideots or lunaticks shall be seifed in trust, &

Stat. 4 Geo. 2. cap. 10.

Note; No order, affidavit, or certificate touch. ing any ideot, lunatick, or non compos mentis, shallbe made use of in this court, unless the same be filed with the clerk of the custodies.

See Stat. 29 Geo. 2. c. 31. whereby lunaticks mar furrender leafes in order to renew them, under the direction of a court of equity.

For proceedings upon a commission of lunacy, vide towards the end of this treatife, vol. 2.

[For more concerning lunacy, vide 2 Eq. Caf. Abr. 580.]

Of guardians and prochein amys.

Guardian is he that hath the custody and edu. cation of fuch a person as is not of sufficient discretion to guide himself and his estate; as minors, ideots, and lunaticks.

A guardianship then of a minor is an interest in the body and lands, &c. of one within age. For the proper remedy to recover a ward, and try the right of guardianship, see 3 Will. Rep. 154, 155.

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A prochein amy, or next friend, is usually taken for that person, by whom an infant, a lunatick, or feme covert fues in this court. And where a fuits (a) The de- by a prochein amy, who is not sufficient to answer(s)

referred to a master, to see whether this bill was exhibited with the consent of the proches amy, and that he might give security to pay the costs. In the bill he was stiled Mr. Perry of Colchefter, and an affidavit was read, that he absconded, and had not been at Colche ter for many years, and was not worth a great: And the plaintiff's counsel infifted, the this reference was never had, but at the inflance of the prochein am, on his affidavit, the the bill was exhibited without his knowled e. But the Maffer of the Rolls made an atder, that the prochein amy should give security to pay the costs, and the quantum was if be fettled by the Master, and all proceedings in the mean time to stay: And the case of Webster and Cuy was mentioned, where the same order had been made the day before by the Lord Chancellor. Moleley 47. pl. 30. Wale, an infant, by Derry his prochein amfi V. Salter & ux'.

costs, the court will order another to be named, A motion who is able and fufficient. that the

prochein amy

prochein amy privileged, as fleward to the Duke of Bedford, might give security to pay costs, or a new one be appointed.

Lord Chancellor,

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Ishall not grant such motion, but on affidavit, that the prochein amy is infolvent, or in nean and doubtful circumstances; for a privileged person is subject to costs, but here the steward can have no privilege, because the Duke of Bedford is a minor. Moseley 86. pl. 57. Anon.—Prochein amy is allowed costs, on dismissing infant's bill. 2 Vez. Rep.

A bill may be brought by one as prochein amy o an infant, without his confent. But none can bring a bill in the name of a feme covert, as her rochein amy, without her consent; and if such bill be brought, upon her affidavit of the matter the bill will be dismiffed. Andrews ver. Craddock, Gilb. 2 Vern. 711. 26. See Abr. Eq. 72.

Outlawry, or excommunication in a guardian, or recebin amy, cannot be pleaded or alledged in difbility, where an infant fues or defends by him; pecause he acts in auter droit. The like of execuors, administrators, trustees, &c. that act in the

ight of others.

Guardians are appointed by writ for infants deendants, and one or more guardians jointly; and his court may affign one of the Six clerks to be guardian to an infant. 2 Chan. Ca. 163. Chan. Rep. 8vo. 44. S. P. But a guardian cannot eotherwise appointed than by bringing the infant ato court, or his praying a commission to have a wardian affigned him. Hil. 1699. Loyd and Carew. hancery, its jurisdiction as to guardians, &c. see Gilb. 172. Barnard. 140. The guardianship of n infant is not affignable over to another. olds and Lady Tenbam, Mod. Ca. L. &. Eq. 40. Where a father may appoint his creditor guardian o his child, vide I Vern. 442. Lecone and Shires. fa person appointed guardian, pursuant to the statute 12 Car. 2. dies, or refuses to take upon himfelf himself the guardianship, my Lord Chancellor may

appoint another guardian in his flead.

A guardian by common law may be removed by this court; but not a guardian according to the statute: Yet this court may hinder a guardian appointed by the father, from abusing the infant's perfon. Foster and Denny. 2 Chan. Ca. 237. And guardians at common law may be removed, or compelled to give security, if there appears any danger of their abusing either the infant's person or estate; and there are several instances of this kind, as Stille 456. Hard. 96. 3 Chan. Rep. 58. 1 Sid. 445. 3 Salk. 177. but there are none where a statute guardian has been totally removed: Some, where such terms have been imposed on the guardian, as effectual to prevent his doing any thing to the prejudice of the infant.

The office and duty of guardians consists in taking care of the infant's person, his education and estate; for they can do nothing but for the prost and benefit of the infant, nor intermeddle with any thing but of what they may tender an account. And they are not to break into the principal of the infant's money, unless for physick, or to bind apprentice and the like; which commonly is done by

the approbation and order of the court.

They may discharge incumbrances on the infant's estate, 1 Chan Ca. 156. 1 Vern. 436. 2 Vern. 193, and 353, S. C. cited; vide 2 Chan. Ca. 197. where my Lord Keeper was of opinion, that a guardian should pay off a judgment by the profits of the estate: And they may, without any direction of the court, pay the interest of any real incumbrance, and the principal of a mortgage; because that is a direct and immediate charge on the land, but not any other real incumbrance. Hill 1700. Palmer and Dauby. But they are not compellable to apply the profits of the estate of the infant

fant heir to pay off the bond-debts. Hil. 1707. Waters and Ebrall, 2 Vern. 606. They cannot, with the rents and profits, purchase lands so as to prevent the money from going in a course of administration. Earl of Winchelsea and Norclisse, 1 Vern.

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If a guardian takes a bond for arrears of rent, he thereby makes it his own debt, and shall be charged with it. 26 Car. 2. Whale and Buckley, 2 Chan. Rep. 97. On his account he shall have allowance of all reasonable expences; and if he is robbed of the rents and profits of the land without his default or negligence, he shall be discharged thereof upon his account. 1 Inst. 89. a. And if a guardian to an infant takes an assignment of the mortgage, tho' the mortgagee never entered; yet per Lord Keeper Wright, as to the profits received out of the mortgaged lands, the guardian shall be taken to be in possession as mortgagee, and not as guardian; but a Q. is added. 2 Vern. 471.

Of trustees.

WHOEVER has the possession of goods or lands, either hath the absolute property or estate in them, by a sufficient title; or, so far as that is wanting, is considered as a trustee for the owner. And he that takes upon him a trust, takes it for the benefit of the person for whom he is trusted, and not to take any advantage to himself.

And by Sir John Trevor, Master of the Rolls, the heir of a mortgagee shall hold only in trust for the executors. MSS. Ca. in Chan. Trin. 7 Ann.

Infants, being trustees only, by Stat. 7 Ann. cap, 19. may be obliged to convey as the court shall direct, without a day.

Regularly no act of the trustee shall prejudice the cestury que trust; but the trustee shall make good the trust. And the law seems to be the same of the act of God; for if the trustee of a legacy dies before the legacy is paid, this shall not prejudice the legate.

A trustee may in some cases sue in his own name, but ordinarily cestuy que trust must be made a party,

On a bill brought to execute a trust, the first person intitled to the inheritance is a necessary party, if in being. 2 Vez. Rep. 492.

What he is compellable to do by suit, he may do without suit; as to join with cestury que trust in tail in a feoffment; for there are trustees merely

to preserve his estate.

Regularly he is to have nothing for his own labour and pains: Yet if he employs a skilful bailiss, and gives him twenty pounds per annum, that must be allowed, for he is not bound to be his bailiss. And he shall not pay, but have costs, except he be guilty of some breach of trust, or some wilful misdemeanor. Toth. 156. Vide 2 Chan. Ca. 138. Nor will the court ever charge him with imaginary values, but only as bailiss, though very supine negligence might indeed, in some cases, charge a trustee with more than he had received; but the proof thereof must be very strong. 1 Vern. 144.

If a trustee is robbed of the money he received, he shall be allowed it on account, the robbery being proved, although the sum is only proved by his own oath, for he was to keep it but as his own. 2 Chan. Ca. 2. [Vide 1 Vern. 28. 2 Vern. 137.

2 Chan. Ca. 132. 2 Vern. 548.]

Where there are more than one, there is a difference between trustees and executors. For trustees have all equal power, interest and authority, and cannot act separately, as executors may, but must join both in conveyance and receipts; for one cannot sell without the other, or desire to receive more

of the confideration money, or to be more a truftee than his partner. So that it would be contrary to justice to charge them with each other's receipts, except in case of necessity, where they so join in receipt, as not to be diffinguished what has been received by one, and what by the other. 1 Salk. 318. But if two 2 Vern. 515. Car. 312. executors join in the sale of the goods, &c. of the testator, they shall be both chargeable, though one of them only received the money, for there was no necessity for their joining. 2 Vern. 570. 1 Salk. 318.

Trustees shall not be examined as witnesses one against another, except in some special cases, and

that by order of the court.

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A trustee examined as a witness was afterwards thought necessary by the court to be, and was made a defendant. Upon hearing, his depositions were not allowed to be read, though he should pay no costs, nor should gain or lose by the decree, (be it as it would) because the decree must be against him, and his depositions are to affirm his own act.

But for compelling trustees to accept trust or assign, &c. see some very prudent terms on which a trustee agreed to act, Finch 258.—For more of

trusts, see 2 Eq. Caf. Abr. 738. to 749.

Of feme coverts.

FEME coverts are married women. And hufband and wife must both join in suit for things merely in action belonging to the wife. I Chan. Ca. 41. But sometimes the wife by her prochein (1) amy, or next friend, sues her husband in this court; as

⁽¹⁾ A person cannot, as prochein amy, exhibit a bill in name of seme erert, without her consent. Prec. Chanc. 376.

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where the fues him for performance of a marriage fettlement or the like: And fometimes the petitions against him, or sues him here for alimony; as where he turns her away, or she goes away upon ill ufage; Alfo a feme covert hath been allowed to fue herein her own name, when her hufband was beyond fea: So in case where a husband released the wife's debr A feme covert, who has a separate (1) maintenance. may fue alone. I Chan. Ca. 35. So may a wife whose husband is banished by act of Parliament; and may act in every thing as a feme fole. 2 Vers. 104. If the wife answers, and the husband stands out all process of contempt, the bill can be taken pro confesso against the husband only. 2 Chan. Ca. 173. So where a wife, by combination, refused to join with her husband in a plea. 1 Chan. Ca. 296. A feme covert must answer alone, if the husband is not 2 Vern. 613. Bunb. Rep. 175. pl. 248. So an attachment was granted against a wife, the husband not being amenable. Mich. 1711. Eq. Caf. Abr. 65. pl. 8. Pre. Ch. 328. Gilb. Eq. Rep. 83. Gilb. Chan. 253. 3 P. Will. 38. in notes. Bill and Commissary Hyde. Tho' the wife's answer differs from the hulband's, yet it shall not prejudice him, for the can be no witness against him. 2 Vern. 79. Vide 1 Chan. Ca. 39.

Where a wife is defendant, you cannot regularly ferve the wife with process to answer, without serving the husband also, tho' the matter in question concerns the wife only. But tho' ordinarily the wife must not answer alone, yet where plate, & had for many years before been deposited with her, and the bill was brought against the husband and

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⁽¹⁾ Bill for wife's feparate effate, is to be brought by prochein amy, but when joined with her husband, payment is ordered to a trustee for her. 3 Vez. Rep. 452.

her, and he being in Ireland could not be brought to answer, she was ordered to answer talone. And frequently the wife is put to answer alone, when the husband is beyond sea: But there is usually obtained an order for the wife to put in and swear her answer separate from her husband. So where she lives separate from her husband, she is often ordered to answer alone. 1 Chan. Rep. 62. But if she answer alone without leave of the court, the answer will be suppressed upon motion.

A feme covert to appear and answer without her husband. Bell. ver. Commissary Hide & uxor'. See

Eq. Ca. Abr. 61, 64, 65.

Baron and feme defendants to a bill; the feme must answer, the the answer cannot be read against the husband, but may possibilly be read against her, if she survives; but in this case the wife was not bound to answer, as the bill subjected her to a forfeiture, the the husband had submitted to answer to the point. 3 P. Will. Rep. 238.

A defendant is not bound to answer what tends to accuse him of maintenance, or of buying pretensed rights within 32 Hen. 8. c. 9, 3 Will. Rep.

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In some cases the wife has been committed without her husband. Cary's Rep. 92. But ordinarily, if the wife be in contempt for any matter in this court, the husband is also liable to process of contempt, and commitment, as the case requires.

Grisewood v. Higson & un. upon petition at the Rolls before Sir Joseph Jekyll, Trin. vacation 1738. The bill was against husband and wife, upon special matter shewn (by affidavit) of collusion between the plaintiff and the defendant's wife; she not appearing to answer the bill, his Honour directed that the process of contempt must be against husband and wife, but that it should not be executed against the husband.

No

No decree can be had against a seme covert for her inheritance, if the husband will not appear, &c. for her answer is no answer without his. Vide 2 Chan. Ca. 39. 173.

But a feme covert, tho' an infant, being heir of a mortgagee or trustee, may be ordered to levy a fine, and make such conveyances as mortgagees and trustees of full age. Com. Rep. 615.

The woman and her husband agreeing to part upon difference, and he giving her a sum of money for her livelihood, which was put into a friend's hand for her, she was allowed to sue alone for this without her husband. Carey's Rep. 87.

A woman divorced from her husband causa frigiditatis, sued in this court for her portion, her
father being alive, and recovered it. Barrow's case.
Also the wise being parted from her husband, and
having an estate to herself, was allowed by the
court to devise it by her will. Mich. 15 Car. 1.
Of things merely in action, belonging to the wise,
as a bond, legacy, &c. she ought to join in suit;
aliter of a rent running in the wise's right after
marriage; and if the husband alone should sue the
bond, and be nonsuited or dismissed, that will not
conclude the case; but if he die before judgment
or decree, the wise cannot revive the suit. 1 Chan.
Ca. 41.

If a wife has a fortune payable in future, to be raifed at so much per annum out of a Term, and the husband dies insolvent before the commencement of the Term, her fortune is not liable to pay her husband's debts, unless he makes her some settlement. MSS. Ca. in Cha. Morgell's case, Pasth. 8 Anne.

Also where a husband covenants to settle certain lands upon his wife, and he afterwards disposes of the lands, and dies, the court will order an account of his assets, and a purchase of lands of equal value

lue to be fettled on her. Harrison ver. Constantine,

MSS. Cases in Cha. Pas. 8 Ann.

But where a Citizen of London agrees to leave his wife so much at his death, and dies intestate she cannot have both her fortune, and her distributive share according to the custom too, but must make her election. Ibid. East against Coggs. Pasch. 8 Anna.

If a feme covert has any particular portion, or fum of money by settlement, decreed her, which became due either before or after the marriage, the court will not order it to be paid to the husband, unless he makes a suitable settlement upon her, or she appears in person in court, and consents thereto: As in Lady Windsor's case, Mich. 8 Ann. where, by act of Parliament, a particular sum was given her in lieu of the lands settled upon her. MSS. Ca. in Cha.

Where the fortune of a feme sole is deposited in court, and she marries even without consent of the court, and sirst the husband dies, and then the wise, without issue, yet it shall go to the representatives of the husband, and not of the wise; for the money being in court, it was always in his possession, subject only to the equity of the wise and the children, for a reasonable provision for them, who failing, the money belongs to his representatives. Gilb. Eq. Rep. 100. Parker ver. Windham, Temp. Cowper C. 1715.

But in Nightingale ver. Lockman & ux. Fitz-Gibb. 148. where the wife's portion was paid into the hands of the Master, and the husband died indebted, the court decreed that this portion was not asset of the husband; for as at law, where judgment is recovered by baron and seme, the judgment survives to the wife, and the benefit thereof, & aquitas sequitur legem, tho' it seems to have been determined otherwise in this court, where

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the wife is a lunatick, for there it has been looked upon as vested in the husband. Note, That this seems to be, where the wife survives the husband. See Stat. 29 Geo. 2. c. 31. whereby seems covert may surrender leases in order to renew them, under the direction of a court of equity.

Of beirs.

A N heir is one that succeeds, by descent and right of blood, to lands, tenements and hereditaments, being an estate of inheritance.

And heirs, as observed before, are some of those persons who are favoured in equity. They shall not be disinherited by doubtful or ambiguous words. 3 Chan. Ca. 131. An heir shall not be disinherited by implication. Pigott ver. Sir Henry Penrice & ux. Com. Rep. 250. And where they are disinherited, they shall be favoured in this court. Vern. 480. Mich. 32 Car. 2. 2 Chan. Ca. 4.

A voluntary devisee shall have no affistance against an heir here, but will be lest to help himfelf at law as he can. 2 Chan. Ca. 134. And tho' a trustee mis employ the money raised on a trust-estate, yet it shall not be to the prejudice of the heir. 1 Vern. 336. 1 Salk. 115. 2 Vern. 178. [See Eq. Cas. abr. 264 to 276. Maxims of Equity, 3. pl. 7.53. pl. 1. 10. pl. 5. 51. pl. 1. 55. pl. 2. 57. pl. 3. 68. pl. 5. 22. pl. 3. 67. pl. 14. 15. 8 Mod. pl. 32, 90, 122, 157, 159, 171.]

And if a settlement is made of lands to be sold in trust for several purposes, the residue is given to B. and his heirs, reserving only 200 l. to be paid to such person as the donor should by writing under his hand direct; who died without such direction; the 200 l. will go to the heir of him who made the settlement, and not to B. or his heirs. Anon. Com. Rep. 345.

If will is made, and estate of inheritance devised from heir at law; devisee commonly exhibits bill against (1) him, in order to perpetuate testimony of it, by proving due execution thereof; this is done by examining witnesses thereto, in perpetuam rei (2) memoriam; for which purpose will in question must be set forth verbatim in bill, which heir at law having answered, plaintiff proceeds to iffue, as in other cases, and then examines (3) witnesses to will, or proves their hands, if they are dead, for the purpose of perpetuating their testimony; the will (if the witnesses are examined in London) must be left at the examiner's office, for inspection by them, and for their being examined thereto; which done, and (4) publication passed, the cause is at an end.

The heir at law, if he examines no witnesses, touching the validity of the will, may give notice of motion, for plaintiff to pay him his costs, to be taxed by Master, which court usually grants: But the heir at law is at liberty (5) to cross examine all the witnesses to the will.

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⁽¹⁾ Where heir at law is made defendant, and infifts on his title, he shall have costs, though the cause is determined against him; but if he be plaintiss, and miscarries on a groundless suit, he shall pay costs. 3 P. Wil. Rep.

⁽a) Though court takes examinations to perpetuate testimony of will, yet it will not try validity thereof, but if title comes collaterally in question, court usually directs issue at law to try same: Therefore such bill must not pray any relief, order, or decree for establishing will, See a Ventr. 366: If plaintist does, heir at law may demur, and insist on his right to contast will at law; whereupon demurrer will be allowed, and an order must be obtained to amend bill. See Vern. 354, 441.

⁽³⁾ If heir at law examines witnesses to prove infanity of testator, at time of making will, or that he was imposed upon, circumvented or improperly importuned, to make same, or that it was not duly executed, according to Stat, 29 Car. 11. c. 3. he shall not have costs, but bear his own. See 2 P. Wil. Rep. 28 c.

⁽⁴⁾ Rules or an order being first obtained for publication.

⁽⁵⁾ Though heir at law cross examines plaintiff's witnesses, and refact to release his right, he shall have costs.

Of executors and administrators.

A Nexecutor is a person intrusted by law with the testator's personal estate; and therefore if there does not appear to be some insolvency in the executor, or some gross design to waste the testator's effects, or to go into another kingdom, equity will not take the security out of his hands, 2 Eq. Cas. Abr. 420. c. 1.

An executor, from his name, is but a trustus, he being to execute his testator's will, and therefore called an executor: And this is the only reason why the legatee may bring a bill against the executor for his legacy. P. Will. Rep. 549, 575.

An administrator is one that hath the goods of a man dying intestate committed to his charge by the

ordinary.

And executors and administrators differ in little else than in the manner of their constitution, their office and duty being almost exactly the same.

Executors may not charge or be charged in equity farther than the law doth charge them. And here they may sue one another. Toth. 74. So one (or both) of them may sue an executor of an executor, if he hath gotten the estate into his hands, or for a devastavit he hath committed. And one executor alone, without the rest, may be sued here; but he shall be charged for no more than he hath. 1 Chan. Ca. An executor temporary proves the will, afterwards his executorship determines: Held, the subsequent executor may sue here without farther probate of the will. 1 Chan. Ca. 265. 2.

If executors sever in their receipts and disbursements, in such case they shall only be answerable pro tanto; but if they act jointly, each of them shall answer the whole, if one becometh insolvent.

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If a fuit be here against two executors, and one of them appears and answers, the suit shall not ordinarily be prosecuted against him to a hearing till the other has answered, and be brought to a hearing likewise; for they are but one person. Vid. Cary's Rep. 30.

Two executors are plaintiffs, one of them is ex-

defendant shall answer him. Toth. 74.

A person may be allowed to bring a bill as administrator, before administration actually taken out.

Barnard. Rep. 320.

How far an administrator shall be charged with

interest. Vide Barnard. Rep. 390.

Tho' an administrator ought to have costs given him to the time of the decree for the account, in what cases the subsequent costs ought to be reserved. Ibid.

When a decree is made against an administrator where interest shall be referved. Ibid.

Where an obligor is made executor, it is no extinguishment of the debt. MSS. Ca. in Chanc.

Bodily v. Hill, Trin. 7 Ann.

Executors indifcreetly placing out money are liable to answer it. *Ibid*. Or where testator dies indebted on bond, and assets sufficient come to the hands of his executor who detains them, and lets the interest go on upon the bond, this prejudice hall be turned upon himself. *Ibid*. Anon. Hill. Ann.

Where a testator leaves no legacy to his executor, then the executor is residuary legatee, if no devise of the residue; for it doth not appear that he hath my thing else for his trouble. Foster ver. Mount, MSS. Ca. in Chanc. Trin. 7 Ann. and 2 Vent. 349, 250.

Vol. I.

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A par-

ry, given to executors that are strangers in blood, excludes them from the surplus: But an executor, if next of kin to the testator, is not excluded from the surplus; for whoever is considered as a trustee of the surplus must be so as to the whole surplus, and the next of kin cannot be for the whole; as next of kin he is intitled to a distributive share. And if there be more executors than one, whether strangers or not, a legacy to one only, shall not exclude him, nor any of the rest, of the surplus, for they are joint, and each had power over the whole. Hunt. v. Berkley, Eq. Cas. Abr. 243 pl. 4.

Executors placing out money in purchases are liable to answer, if the cessury que use disapprove of it when he comes of age; or if they lend money on personal securities, it is at their own peril. Pre. Ch. 273. Rep. Eq. 10. Gilb. Chanc. 341.

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A. by will gives an annuity out of his personal estate. If the executor has misbehaved himself, the court will order part of the personal estate to be staffed to secure this annuity. 2 P. Wills 163.

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Toften happens that some persons may have a right to an estate, yet not wherewith to proke cute the same, or else may be prosecuted, or made parties to a suit, as knowing much therein, yet have not wherewith to make either a defence or discovery; in such cases this court (which delights in justice and mercy) will admit such poor persons either to sue or defend in forma pauperis.

But here it is necessary to observe, that there are many paupers who bring only vexatious suits; who being detected, and the court informed thereof, they shall not only be dismissed, but punished.

The method of obtaining such admission is sirst for the party to make an affidavit before a Master, that he is not worth in all the world the sum of five pounds, his just debts being first paid, and his wearing apparel and the matters in question only excepted; and then to draw a petition to the Master of the Rolls, praying to be admitted in forma pauperis, and to have counsel, and a Six clerk assigned him,

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But when the plaintiff petitions, he must at the bottom of his petition (which differs from the form of a defendant's petition, being special according to the circumstances of the case) have a certificate under counsel's hand, signed at the bottom of the petition, signifying that he has just cause of suit; and although the bill be filed, he must have a special petition, shortly stating the merits of his cause, and counsel's certificate to be admitted. But if a pauper desendant petitions, he only draws a very short petition to be admitted to defend the said suit in forma pauperis, and praying that counsel and a Six clerk may be assigned him; and there is no occasion for any certificate.

This being done, and the affidavit annexed to the petition, he presents the same; and if there appears no cause against it, the Master of the Rolls underwrites an order for the petitioner's admission,

according to the prayer of his petition.

And after admittance, no fee, profit or reward (except pauper fees) is to be taken of the pauper by any counsel or attorney for the dispatch of business, whilst it depends in court, and he continues in forma pauperis: Nor shall any contract or agreement be made for any recompence or reward afterwards. And if any person offending herein shall be discovered unto the court, he shall undergo the discovered unto the court of the court

pleasure of the court, and such farther punishment as the court shall think fit to inslict: And if any pauper offend herein, he shall be dispaupered, and never again be admitted in the same suit in forms pauperis. Vide Ord. Chan. 152.

But although the clerks take no fees, strictly so called, of a pauper, yet they may make him pay for the labour of writing, which is after the rate

of two-pence per sheet.

And if it be made appear to the court, that any pauper has fold or contracted for the benefit of his fuit or any part thereof, while the same is depending, such cause shall be thenceforth wholly dis

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missed, and never again retained.

Formerly no process of contempt at a pauper suit was to be sent to be sealed, until signed by the Six clerk, who was to take care it should not be vexatious or needless: But this is now altogether disused. But the order of admission is usually produced in the office, where the pauper has occasion

to pais.

And as a party may be admitted in forma parper at any time during the fuit, so he may be dippaupered at any time, upon its being made appear to the court, that he is of such ability, that he ought not to sue in forma pauperis. And in a case of this nature, where it was shewed to the court, that a pauper was in possession, and received the rents of the lands in question, the court orders him to be dispaupered; the the defendant had a verdict at law, and might thereupon take a writed possession, &c.

Both plaintiff and defendant may be admitted in forma pauperis in the same cause: But this had been complained of as an abuse; for that it tends much to the disquiet of the court, and encourage the parties to be vexatious. Yet where it is a matter of contest, and the matter seems dubious, the court

will admit both plaintiff and defendant to fue and defend in forma pauperis.

And if a cause goes against a pauper, he shall not pay costs to the defendant; but he may be punished personally, as the court shall think fit : Yet such

punishment is very seldom inflicted.

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Plaintiff a pauper had a decree for the duty and cofts, the Master taxed costs as usual for persons not paupers. On motion the court ordered plainriff and his solicitor to make oath before the Mafter of what they had paid, or were to pay, and that to be allowed, but no further. 2 Eq. Caf. Abr. 633.

A person, by getting himself admitted a pauper, cannot discharge himself of costs he was liable to,

precedent to his admission. Moseley 68.

CHAP. IV.

Of bills.

BORRESS TO

TAVING before shewn what is an original and an injunction bill, proceed we now to consider other bills made use of in this court, viz. amended bills, supplemental bills, cross-bills, bills of interpleader, certiorari bills, bills to perpetuate testimony of witnesses, bills of revivor, bills of review, and bills original after decrees. after as appearances it before entwer,

Amended bills.

A N amended bill is but esteemed a continua-A tion of the original bill, and they two reckoned but as one. And where any alteration is made in a bill before the cause is at issue, this is T 3 called called an amended bill, and obtained by order of the court: And if you require an answer to the amendments, it is on payment of twenty shillings costs: But where new matter happens pending the fuit, and after replication, or that the cause is at iffue, which matter is necessary for the plaintiffs to fet forth to the court, this cannot be done by way of amendment; but fuch new matter being discovered; you set it forth by a supplemental bill. which you draw and file of course, without any

order for that purpose.

Demurrer to bill, because no representatives were made parties; afterwards, to help this defect, the plaintiff took out letters of administration, and charged the same by way of amendment to the bill, having obtained an order for such amendment. Objected, these were matters arising after the filing of the bill, therefore proper for a supplemental bill: And though this was pleaded to the bill, yet the plea was over-ruled, because such matters may be charged either by way of supple-3 Wil. Rep. 351. mental or amended bill.

phreys and Humphreys.

A bill may be amended where there are not proper parties. 3 Chan. Rep. 92. And if any overlight in a bill is discovered, which requires an amendment before an answer, the plaintiff may, upon motion or petition, either amend or dismis his bill; but if the defendant has appeared, and taken a copy of the bill, the bill cannot be difmissed without payment of costs to be taxed. And after an appearance, if before answer, the plaintiff may also, upon the like application, amend without costs, amending the defendant's copy; and this is no more than an order of course. But if the plaintiff wants to amend his bill after the defendant hath put in his answer, and he requires an answer to the amendments, he must, by his counfel,

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counsel, either move the court, or petition to amend the same on payment of twenty shillings costs
to the desendant, which he must take care to pay
before he proceeds, otherwise he will be guilty of
irregularity; and in this case the desendant must
be served de novo, and proceeded against as in the
case of an answer to an original bill, since an
original and amended bill are in the eye of equity
only one bill, and they both make up but one
record.

If a demurrer is put in upon a slip or mistake (or otherwise) in the bill, the plaintiff may immediately, after the demurrer is filed, obtain an order, on paying the defendant's clerk twenty shillings costs, to amend his bill. But if the defendant obtains an order for arguing the demurrer, the plaintiff must also pay the charge of obtaining such order, and also the twenty shillings costs, before he can amend his bill.

It is faid that the court, even after publication, and any time before hearing, will, upon cause shewn, suffer parties to be added. But if a defendant be added after publication, the cause, as to such defendant, must be heard upon bill and answer only.

A bill may be amended (by order) by adding several tenants of a manor, in order to establish a custom, Nel. Chan. Rep. 114.

A conveyance set forth in a bill without date, amended by order. Vide Nel. Chan. Rep. 260.

Supplemental bills.

Supplemental bills are brought upon discovery of any new matters since the original bill and answer, and other proceedings had in the cause,

in order to supply the defects of some former proceedings when it is too late to amend the same.

They are brought in aid of a decree or account, or to supply the defect of some former proceeding; but it must be upon new matter discovered since the hearing the cause, or pending the suit.

Where new matter happens pending the suit, and before or after replication, which matter is necessary to be set forth to the court, it cannot be done by way of amendment; but you may of course file a supplemental bill; which must be a distinct bill, reciting briefly the former proceedings, and then the new matter.

Where a supplemental bill may be exhibited for discovery of more evidence, vide 2 Chan. Rep. 142.

Boeve and Skipwith.

Where a supplemental bill will lie, containing new matter, which the party has discovered since the former decree; and at the same time a petition of rehearing in nature of a bill of review praying that the former decree may be rectified in the particular complained of by the bill. Barnard, 468.

In a bill of review a new supplemental bill may be added. Hil. 1682. Price and Keyte, 1 Vern.

135.

On a supplemental bill, the court, upon motion, will give leave to add to the first interrogatories, so as the new interrogatories contain nothing but what relates to the supplement. Ord. Chan. 126.

Or, I think, you may file a replication to the defendant's answer to the plaintiff's supplemental bill, and obtain an order that service of a subpana to rejoin ret. immediate, on the defendant's clerk in court, may be deemed good service on the defendant; and then draw interrogatories to examine your witnesses touching such new matters contained

in your supplemental bill, in case the desendant has denied the same in his answer.

They are brought either before or after hearing. Where it is after hearing, it recites the former proceedings, and the true state of the cause, and then, by way of supplement, adds the new matter, and then prays process, as in an original cause.

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Where a supplemental bill is brought after publication, it is irregular to examine withestes to a matter that was in issue, and not proved in the original cause, and such proof not to be read. Bagnal 1, Bagnal, 1725. 12 Vin. Abr. 114. pl. 9.

If there be no proof of the new matter in the supplemental bill, it must be dismissed, if such matter is not fully admitted in the desendant's answer.

Where a supplemental bill is brought after publication, it is irregular to examine witnesses to a matter that was in issue, and not proved in the riginal cause, and such proofs are not to be read. 2 Vol. Abr. Eq. 172. c. 4.—If there be no proof to the new matter in the supplemental bill it must be dismissed. Ibid. [Vide 2 Vol. Abr. Eq. (E) p. 172.]

Cross bills.

A Cross-bill is a bill brought by the defendant against the plaintiff in a former bill depending, touching the matter of such bill, or the facts set forth in the defendant's answer to the plaintiff's original bill.

It is in nature of a defence, and was first allowed, that the party might state his own case more to his advantage, than he could by his answer, Maselty 382.

weed, that in all cares of a crois bill, sier or

It must be brought before publication is passed on such first bill, and not after, except the plaintiss in the cross-bill will go to hearing upon the depositions already published, because of the danger of perjury and subornation, if the parties should, aster publication of the former depositions, examine witnesses de novo to the same matter before examined unto. Vide Nel. Chan. Rep. 103.

If a bill is exhibited in one court of equity, there may be a cross-bill in another; as if the mortgagor exhibits a bill to redeem in the Exchequer, the defendant may bring a bill in Chancery to foreclose: Per North, Lord Keeper, 1 Vern. 221. But I most humbly conceive that this is not

adviseable to be done.

When a cross-bill is put in, both causes commonly proceed to be heard together, which cannot be if one bill be filed after publication in the other cause; unless such last cause is heard on bill and answer. But if there be cross causes, and publication is past in both, and one of the plaintiffs omits to serve subpana's to hear judgment, his cause shall not come on at the same time with the other,

where there are cross-bills, the defendant in the first bill must generally answer, before he in the last shall be compelled to put in his answer: And by the course of the court the plaintiss in the last bill cannot have process of contempt against the other till eight days after his own answer is put in. And in case the plaintiss in the last bill should attempt to make out process of contempt, the defendant may obtain an order that he may have a week or fortnight's time to put in his answer to the cross-bill, after the defendant has put in his answer to the plaintiss's original bill.

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Earl Chancellor Hardwicke desired it might be observed, that in all cases of a cross-bill, after original cause was proceeded in ; motion to enlarge publication, should be special, on notice, that court might judge thereof on circumstances, and not of courfe, as it is, where original cause is not proceeded in, for otherwife it would be easy to delay hearing by this means. 2 Vez. Rep. 36. pl. 1110: I was add obliged to softwer, o atmosphist or

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original Bills of discovery. a sandad was and the HIS bill lies for the discovery of an estate by one who had title to it; as by the (a) patentee (a) Carey 1. of the goods of a felon, or of one (b) outlawed, (b) Hards. for outlawry is in nature of a gift or judgment to 22. the King. So where A. (c) obtained judgment a= (c) Vern. gainst B. and the defendant, to defraud him of the 398, 399. benefit of it, affigned his estate to trustees for himfelf. A. may have a discovery, tho' it is objected, that this is in the nature of a foreign attachment, and that there could not be a discovery of a man's. personal estate in his life-time. But if the plaintiff in such case has not taken out execution, it will not be allowed. And it feems agreed, it would not lie against the debtor himself, nor to have a general discovery from a third person, but only for particular things. Where a lighter is overfet by negligence of the lighterman, or a ship takes fire by the negligence of the master or ship's crew, these come within the reason of any common carrier, and therefore he shall have a discovery to enable him to bring his action. Yet a plaintiff is not admitted to a discovery without verifying his title at (d) law. Treat. Eq. chap. 3. p. 123.

It was determined by the late Lord Chancellor Abr. 538. Hardwicke, that the defendant was not obliged to discover by answer, whether he be a papist or not; in that case on the marriage of Mrs. Pain with Mr. smith, a settlement was made to use of husband and

wife

wife for their lives, and after to the first and other sons of that marriage in tail, remainder to Mrs. Pain in see, who devised it to the defendant; and the bill was to discover if the devisor was not a papist, in which case the devise would be void; and on plea to this bill, Lord Chancellor held, that defendant was not obliged to answer. Atk. 526. pl. 254. 8 Vin. Abr. 540. pl. 21. in notes.

(e) This plea over ruled, Bunb. Rep. 60, pl. 100, Whether a plea (e) of the statute of limitations be a bar to a discovery, and whether the point of plea ought not to be considered first. 8 Vin. Abr. 538. pl. 8. Earl of Broadalbine v. Earl of Cathnels.

of the ecclesiastical jurisdiction. Per Lord Hard.

wicke. Ibid. pl. 9. Dan v. Balguy.

Bill for the discovery of a promissory note for 275 l. suggesting that it was given en turpi causa, to smother and make up a selony, &c. Demurrer to that part of the bill which seeks a discovery if the note were not given to make up a selony, which is of a criminal nature, &c. and the demurrer allowed. 8 Vin. Abr. 543. pl. 6. Guiborn v. Fellows, & al.

Persons who claim lands by a will or any other voluntary disposition, having the law on their side, are intitled as against an heir at law to a discovery of equity in deeds, relating to the estate, and to have them delivered up, otherwise the heir might defend himself at law by setting up prior incumbrances, and by that means hinder the trying the validity of the will. 8 Vin. Abr. 551. pl. 12. Duches Newcastle v. Lord Pelbam.

Though no bill of discovery will lie on penal statutes without waiving the penalty, yet the advantage of pleading it seems waived by partners in clandestine trade. Gilb. Eq. Rep. 186, 187.

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A cause being brought to a hearing, where the bill was for a discovery only, the question was, whether the bill should be dismissed, or the cause struck out of the paper? And his Honour the Master of the Rolls ordered the cause to be struck out of the paper, because a bill is never dismissed, where the plaintist prays no relief; for the words of a dismission are, The court seeing no cause to relieve, &c. Moseley 185, pl. 95. Anon.

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If a bill is brought to be relieved against a deed fraudulently cancelled by the defendant, and to have another deed executed, the plaintiff need not make outh of the loss of the deed, because he could have no remedy at law, though the deed was in his hands. Moseley 192, pl. 104 in many.

If the plaintiff feeks to be relieved in equity on the matter of a deed, he must make oath of the loss of it, but not, if he prays only a discovery, or to have it produced at a trial, or the like. Masely 192. pl. 105. in marg.

Bills of peace. mo los a rot Mid

BILLS of peace are proper in equity. Vern.

A bill shewing that one commoner had recovered one shilling, or other small damages, against the plaintiff for oppressing the common, or for using the common where he ought not; and therefore that the defendant, another commoner, may accept of like damages for what is past, to prevent sharges at law, is in nature of a bill of peace, and proper in equity. Vern. 308. Eq. Cas. Abr. 79. pl. 2.

Bill brought by one tenant of a manor, fuggesting a custom for the tenants of the manor of A.

[of which he was one) to cut turfs in the manor

of B. to quiet him, and to have an iffde directed as to the right, was the end of the bill. This bill is improper, and inconsistent with the nature and end of fuch bills, which is, that where feveral persons having the same right are disturbed, on application to the court to prevent expence, and (to which each of them are intitled on their feveral rights) multiplicity of foits, iffues will be directed, and one or two determinations will establish the right of all parties concerned on the foot of one common interest; but in all those bills either all parties join, or a determinate number, in the name of themselves and the rest, prefer a bill; but in this case one only brings the bill on the general right, and not on the foot of any particular diftind right. Bill difmiffed with cofts. Per King. C. Sel. Caf. in Chan. 74, 75.

Bill to establish a custom in the case of a common person must regularly be founded on a trial at law, for when the right is settled it becomes a bill of peace. So where the city of London brought a bill for a customary toll for going through one of their gates with a carriage. Defendant demurred, because the toll was not established at law, and demurrer allowed. 2 Eq. Cas. Abr. 172. pl. 5.

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Bills quia timet.

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IF A. being seized of lands in see, grants a rentcharge issuing thereout, and after devises the lands to B. for life, the remainder to C. in see, and dies, C. may compel B. to pay the arrears, for fear all should fall on C. in reversion; although it was urged, that this was a remote possibility. Chan. Cas. 223.

If A. is bound for B. and has a counter bond from B. and the money is become payable on the original

eriginal bond, equity will compel B. to pay the debt, though A. is not fued; for it is unreasonable that a man should always have such a cloud hang over him. Per North, Lord K. Vern. 190. who is not party in the lift cause, reppoles he had

feparate interest in the matter in question and Bills of interpleader. (a) What

A Bill of interpleader is where two or more, bill as to co-pyholds or claiming the fame thing by different or fe-tenant right parate interest, pray the judgment of the court to Barnard. which of them it belongs. 30 all 1880 1080 200 Chan, Rep.

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But that which is commonly called a bill of in- 250. terpleader, is that which is exhibited by a third person, who not knowing to whom he ought of right to render a debt or duty, or pay his rent, fears he may be hurt by some of the claimants; and therefore prays that they may interplead, fo that the court may judge to whom the thing belongs, and he be thereby rendered fafe on the payment: As where two parties are pretending title at one and the same time to an estate, and are harassing and suing the tenants for nonpayment of rent. Or where a man holds stakes at a horserace, and the parties can't agree who won the match, yet both are fuing at law for the money; and in many other cases the party brings his bill of interpleader for claimants to interplead among ft themselves, to whom the estate or money belongs, and to prevent his paying it twice over, and that proceedings against him at law may be staid till the title be obtermined. And this he may do, whether any fuits be actually commenced against him in law or equity, or is only in danger of being fued or molested by the parties. But to this Bunb. 303. bill he must annex an affidavir that he does not ex- pl. 386. hibit it by fraud or collusion with all or either of the defendants, or of any other person or persons,

the side of gain accordance bevalue ed of garage persons may

money into .11000

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but only to be indemnified, and to pay his rent or debt fafely to fuch person to whom this court shall

Sometimes a bill of interpleader is, where one

order or adjudge the same to belong.

who is not party in the first cause, supposes he has separate interest in the matter in question, and brings his bill against the first or other defendant, praying to be relieved according to his right: Whereupon the first plaintiff makes the second a defendant, in order to interplead and contest the right; or, if the first plaintiff does not make him a defendant, then the defendant may exhibit his bill against all the other parties, and pray that they may interplead, and that the court may order and decree to which of them the thing in demand belongs, and further as his case requires. Or, if there be no fuit here between the pretenders, he. who has fuits at law brought against him, or is in danger of trouble from both the claimants, may file his bill against them, and pray that they may interplead; and that the proceedings at law against him may be stayed till the right be determined; But the plaintiff who brings such bill of interpleader commonly offers by his bill to pay the (a) The bill money (a) or rent into court, for the benefit of fuch party to whom the court shall adjudge the fame to belong: And in cale he does not make fuch offer, the court, upon application of either of the defendants, will order fuch plaintiff to pay the money or rent into court, or the Bank of England, for the benefit of fuch party to whom the court, at the hearing of that cause, shall decree the same.

must offer at leaft, to bring the money into court.

> To a bill of this nature the plaintiff must annex an affidavit, that there is no collusion between him and any of the parties, &c. as before.

If a cause has been heard upon a bill of interpleader, and a trial at law directed to fettle the

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right between the defendants, there is an end of the fuit as to the plaintiff; so that if he afterwards dies, the cause shall still proceed, and there needs no revivor, each defendant being in the nature of a plaintiff. Ruled upon motion. I Vern. 351. [Vide 2 Vol. Abr. Eq. (F) p. 173.]

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Certiorari bills.

A Certiorari bill in this court, is such whereby a special writ of certiorari is prayed, for removing a cause from an inferior court of equity, upon suggestion that the cause is out of the jurisdiction of such court; or that the witnesses, or the defendants live out of its jurisdiction; or upon some good reasons given why equal justice may not be had in such court. So that a certiorari bill has something of the nature of an injunction bill, as to the jurisdiction of inferior courts.

A certiorari bill was brought to remove a cause out of the Mayor's court, his witnesses living out of that jurisdiction; and inserted other matters relating to an account not in controversy in the Mayor's court. After examination of witnesses, the desendant moved for a procedendo; and insisted, that if the cause should be heard here, he could not be relieved, not having any bill here; but a procedendo was denied, the bill containing other matters not determinable in the Mayor's court; neither can the bill be divided: But the cause, after hearing, was dismissed out of this court. Mich. 15 Car. 2. Rich and Jaques, 1 Chan. Ca. 21.

Upon a certiorari bill the cause is brought on to hearing; the court, if they think fit, may either send the cause back to be determined in the Mayor's court, or detain it. It has been done both ways, Vol. I.

fometimes retained and decreed here, but oftener fent back; fometimes after publication, and fometimes after a subpana served to hear judgment.

Vide 2 Vern. 491.

Upon motion and a certificate from the Six-clerk that the bill is filed, the certiorari writ prayed thereby will be granted by the Lord Chancellor; and it is commonly directed to the Judge of the inferior court, requiring him to certify, or fend to this court, the tenor of the bill or plaint there, with the proofs and proceedings thereon, and upon or before the receipt of the writ, the plaintiff must enter into a bond, with condition, that the bill exhibited contains matter sufficient to bear a certiorari; and the plaintiff must prove the suggestion of the bill in 14 days after the return of the writ; when that is done, fue out a subpana and serve it, then get the Register's certificate that fecurity is given, and a certificate that the bill is filed, then draw a brief of the bill and move for a certierari; which being granted, draw up the order, pass and enter it as in common cases, and sue out the certiorari and get it returned, then the bill removed must be reingroffed and filed as an original bill, and move to file the certiorari, which is filed with the bill removed; this being done, you must draw interrogatories to prove the fuggestions in the certiorari bill, file them with the examiner and examine your witnesses; which done you must move or petition to refer it to a Master, and the examiner is to attend with the depositions; but if it appears by the plaintiff's own shewing in his bill below, that he lives out of the jurisdiction of the inferior court, you may, without proving any allegation, move or petition to retain the bill removed, and have an order; after which the defendant must put in his answer, and you proceed as if the cause had been originally brought in Chancery; but if it be neceffary

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not or i ceffary to proceed upon the interrogatories, you must get the Master's report; if he reports the fuggestion of the bill proved, you move or petition to retain the bill upon the Mafter's report; in case you have not time to prove the fuggestion within fourteen days, you may, upon motion or petition, get an order for further time, on affidavit of the remoteness of his witnesses, or other good cause; if the fuggestion be not proved within the time, a procedendo may be a warded by the Chancellor to the Eq. Ga. Abr. 80, 81.

The certiorari bond is to be entered into by the plaintiff and one furety in the penalty of 100 %. to the Mafter of the Rolls and the senior Master in

Chancery.

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Not the plaintiff, but only the defendant in an inferior court of equity, may remove the proceedings hither by certiorari. And though such defendant, who is plaintiff in this court, is to examine within fourteen days after the writ is returned, as to his proving the furmiles or fuggestions of his bill; and giving the court jurisdiction; yet the other fide is not to examine to, or publish any thing against it: But after the plaintiff's first examination to prove his fuggestions as to the jurisdiction, if the court retain the cause, both parties are to examine their witnesses orderly, touching the merits: And to have publication passed in the ordinary court.

Bill to perpetuate testimony of witnesses.

THIS bill must shew a title to the thing where- ny of witto the testimony relates; and on affidavit that be brought the witheffes to prove it are old, infirm, fick, and in the Channot like tollive long; or that they are going to fea, maica, the or beyond feas, whereby the party is in danger of a bill depen-

(a) (a) Bill to lofing Barnard. 270 losing their testimony, &c. and therefore the plaintiff, on such assidavit, may obtain an order to exmine them; (and if necessary, a commission for that purpose) and a subpana is to be served on all the parties interested, to shew cause, if they can, to the contrary.

In a bill for this purpose, if the plaintiff prays relief, the bill shall be dismissed. 2 Vent. 266.

After the bill is filed, the court, on affidavit that the faid witnesses are old, infirm, going beyond sea, &c. if they are in the country, will, on motion or petition, grant a commission according to the prayer of the bill; or if they are within ten miles of London, will order them to be examined in court de bene esse. But more of this hereafter, under examination of witnesses. [See 2 Vol. 117. See 2 Eq. Cas. Abr. 180.

Bills of revivor.

BILLS of revivor are to revive suits, and all proceedings thereon abated. 1 Vol. Abr. Eq.

2, 3.

When any of the parties to a bill die, or if a feme (plaintiff) marries, regularly the fuit abates; otherwise, if a feme sole (defendant) marries pendente lite, for such marriage does not abate the suit. But with respect to an abatement by the death of parties, it must be by the death of such as were so far materially concerned in interest, as to make it necessary to have their representatives before the court, before the cause can be finally determined.

If the plaintiff dies pending a fuit, it is abated, and his executors or administrators must revive the cause before they can proceed thereon, and all the orders for the revival of proceedings must be served on the adverse clerk in court, to the end that he

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If a defendant dies, the suit is abated; and if it is a personal demand against him, the bill must be to revive and answer against the representative of such defendant, and the subpana accordingly. And this bill prays either an admission or discovery of assets, from the legal representatives of the dead

party. Eq. Caf. Abr. 1, 2, 3, 4.

It is generally held, that if the executor or administrator of the dead defendant admits affets sufficient in his hands to answer the demand in queflion, this is good; but in some cases the court will not allow it to be fo, tho' this rarely happens. Indeed, if the heir or executor fets forth the yearly value of the real estate subjected to affets, this is good, because the real estate can't run away; but on admission of personal assets, it may be in the power of the party to waste or run away with them; for, in this case, nothing but the person of the party is at stake; and there may be cases where two executors are appointed, and one refuses to act, and the other, who is infolvent, possesses the And therefore, when any whole estate or assets. of these cases appear to the court, and where the party who possesses the affets is in dubious circumflances, it is no new thing for the court to oblige him to set forth the affets in specie, to the end that the plaintiff may pursue and follow them, and know where they are, and how to be come at, when he wants the same. But this rarely happens, and is only done in extraordinary cases.

If two joint tenants exhibit their bill, and one releases, this will not abate the suit as to the other.

2 Freem. 6.

By the spiritual law the death of the party never states any suit. 2 Rol. Rep. 20.

Where a fuit abates, the plaintiff may bring an original

original bill or bill of revivor at election. 1 Vern.

393.

On a plea in abatement for want of proper parties, it is discretionary in the court, either to dismiss the bill without prejudice, or to give leave to amend on payment of costs of the day. I Will, Rep. 428.

The Attorney General of the Duchy exhibited an information at the relation of one part-owner of coal-mines, against the others, the relator dies, this abates the suit. Prec. in Chan. 13.—See 2 Eq.

Caf. Abr. 1.

Where the testator had pleaded to a bill, and died before the plea was argued, the executor must plead de novo: For the first cannot be argued now. Mickleibwaite ver. Calverly and Baker, Cases in

Equity Temp. Talbot 3.

The plaintiff, his heirs, executors or adminifirators, who have the right of suit by privity of blood, or representation, may exhibit this bill against the other party, his heirs, &c. especially where the original desendant has put in a sull answer to the plaintiff's original bill; unless the bill of revivor prays a specifical discovery of the assess of the original desendant, or some other matter proper to be answered by the desendant to such bill of revivor.

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But where strangers, or even debtors to the estate, are made parties for a discovery of assets, they shall never discover that to any one but to the executor or administrator of the party, who alone can recover them, (especially where the executor or administrator by his answer has admitted assets) for a stranger, where there is no privity of estate between him and the testator, shall never sue strangers who are no ways accountable to him. Indeed, if the executor or administrator appears plainly to the court to be insolvent, cases may be found

found out where the court will lay their hands on the affets: But this scarce ever happens; nor can the court, strictly speaking, oblige any executor to give security to answer the debts, for it was the testator who made him his executor, and appointed him to stand in his place, and if he wastes and runs away with the affets, there is no helping of it.

If the defendant's time for answering is out, the court will order proceedings to be revived. So tho' the defendant by his answer insists that the plaintiff is not intitled to revive; for this ought to be shewn either by plea or demurrer; but if in such case it appears at the hearing that the plaintiff had no title to revive, he can't have a decree. 2 P. Will. Rep. 348. Harris v. Pollard.

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An answer is not commonly necessary to this bill; but the defendant may for his own benefit, (altho' no answer is required by the bill of revivor) by way of answer or plea, set forth and shew cause against the revivor; as that the present plaintiss is not heir, &c. That he standeth not in the like case, nor hath the like interest, &c. as in the former suit.

This bill must pursue the first bill; and in case of any material difference between them, the defendant may demur, and the bill be dismissed: But if there be any new matter arising by the abatement, as assets in any heir's, or executor's hands, the bill of revivor may pray a discovery, and a subpana to revive and answer, in which case, the defendant must answer thereto.

If an executor or administrator on a bill of revivor, by answer, admits assets, and the plaintiss, upon coming in of such answer, revives his suit (which is always done of course, by order of court) and proceeds in the original cause upon the revivor, he must not afterwards refer the answer for insufficiency; for this he ought to have done at first, before he proceeded to revive the original

J 4 cause

cause; and his doing thereof was an admission the answer was full and perfect, or otherwise he might have excepted thereto, but then he could not proceed to revive till he had got over that

point.

A bill is brought against a man and his wise, where the matter wholly concerned the wise; they both answer, and the husband dies: Here a bill of revivor must be brought against the woman, for she shall not be obliged to abide by that answer, which she, together with her husband, or solely as his wife, had formerly made; because she was then under coverture, and consequently under the awe and influence of her husband: But if the matter in question remain in statu quo, it is in her election, whether he will abide by that answer or not.

Where a feme sole answers, and afterwards pendente lite marries, the plaintiff may proceed against her without reviving, and the husband shall be bound by the answer she made whilst sole; for she shall not take advantage by her own act: But the husband, in that case, is a party of course in all the proceedings in the cause subsequent to his wife's answer: And there is no occasion for a motion for an order to make the husband a party.

But if a feme plaintiff marries, by her own act the abates the suit, of which the desendant may take advantage; and she and her husband must therefore exhibit a bill of revivor, and serve a subpana to revive, and the time for answering being out, it is a motion of course to revive proceedings, &c.

The death of a material party, as I observed before, abates the suit: So does the marriage of a seme plaintiff. 18 Car. 2. Hambden and Brewer,

1 Chan. Ca. 77.

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A commission being granted to examine witnesses at Algiers, the plaintiff died, by which in strictness the suit abated, but the witnesses were examined there before notice of the plaintiff's death; the examination was held regular, as well in regard to one of the witnesses that was dead, as to another that was still living. 3 Will. Rep. 195. Thomp-son's case.

The death of the wife, when they sue for what they have a joint right to, shall not abate the suit, Cary 81. for the whole interest survived to the

husband.

So if the husband and wife sue in the wife's right, and pending the suit the husband dies, yet the wife may proceed. 3 Chan. Rep. 40. But otherwise if the suit had been concerning the wife's inheritance. Mich. 1691. Shelberry and Briggs, 2 Vern. 249. By the death of one jointenant the suit does not abate. 3 Chan. Rep. 69. Secus of tenants in common, for a right descends to their representatives.

The plaintiff's death, after a bill of interpleader, abates not the fuit. Ruled on motion. 1 Vern.

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Though by the death of the cessury que trust, the suit abates as to him; yet if there be a decree against him and his trustees, to convey, &c. the trustees are obliged to convey, for the death of either party makes an abatement only quoad himself.

If some of the plaintiffs refuse to join in bringing a bill of revivor, the others may bring such bill, and make those who refused defendants. And a defendant may bring a bill of revivor, as well as a

plaintiff.

The court will order money out of court to a person intitled by a decree, notwithstanding the death of some of the parties. Mich. 1727. Eq. Cas. Abr. 2. between Finch and Lord Winchelsea.

A de-

A devisee cannot revive for want of privity ad. mitted. 1 Chan. Ca. 174.

(a) Vide p. 227.

By this

acted, that

An affignee may by scire facias; (a) Dunn and Allen, 1 Vern. 283. fed vide 1 Vern. 426. S. C. Whether he may for want of privity, quere, but he may bring a bill of revivor.

On a devifee's bringing an original bill in nature of a bill of revivor, he shall have the same advantage as an heir or executor; and the defendant is not at liberty to make a new defence, or dispute the validity of the decree: 2 Vern. 548.

Upon a bill in nature of a bill of revivor against a devisee, the devisee cannot dispute the justice or validity of the decree; for then a devilee would be in a better case than an heir. 2 Vern. 672.

A bill of revivor may be brought against a devisee. Minshall and Lord Mobun, 2 Vern. 672. but fee Moseley 44. where the contrary is held by Lord Chancellor King. In a mutual account the defendant as well as plaintiff may revive. Stowel and Cole. Vide antea, Mich. 1727. Finch and Lord Winchelfea, That the defendant in any case may revive, as well as the plaintiff, [after a cause is beard and a decree pronounced] and if there are several plaintiffs who refuse to join in reviving the suit, they may be made defendants.

If an administrator obtains a decree, but dies before involment, the administrator de bonis non may revive this decree within the equity of the * Statute Stat. it is en 30 Car. 2. c. 6. Owen and Curfon, 2 Vern. 237.

nistrator debonis men, may sue a scire facias, and take execution upon a judgment had in the name of an executor or administrator.

> I think, to revive a decree by scire facias is, where the decree is figned and inrolled; and where 'tis not figned and inrolled, a bill of revivor must be brought vide post (a) (b).

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A creditor admitted to come in, may revive. Trin. 1702. Eq. Caf. Abr. 3. Pitt and The creditors of the Duke of Richmond. If the plaintiff revives against two only, when there were three defendants to the original fuit, his bill will be dismissed. Cary 78. quære.

Plaintiff may proceed against the husband without reviving against the administratrix of the wife. Jackson and Rawlins, Mich. 1690, 2 Vern. 195.

The heir or executor of the party dying may re-

vive. Ferrars and Cherry, Mich. 1701.

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(a) If the fuit abates, the plaintiff may bring either an original bill, praying that a parallel decree may be made, or a bill of revivor, which revives all the proceedings had therein before the decree is figned and inrolled; but if after, it ought regularly to be revived by scire facias. Vide infra 2 Chan. Rep. 67.

After a decree to account, and abatement of the fuit by the defendant's death, his representative may revive. Kent and Kent, Preced. in Chan. 197.

A bill of revivor upon a bill of revivor lies until the interest of the thing in question be determined. Mich. 13 Car. 2. Hard. 201. Agreed per curiam,

especially in case of death.

If one be named a defendant in the original bill, who is yet alive, he ought not to be named in the bill of revivor, for the fuit never abated quoad him. Hard. 201. But if named in the bill of revivor only, he must be named in every bill of revivor after, because he was not named a defendant in the original bill. Mich. 13 Car. 2.

After a decree figned and inrolled, the fuit is regularly to be revived by feire facias. Sed vide 2 Chan. Rep. 67. Though in case of a decree (b) inrolled, a revivor by a bill hath been allowed good.

1 Chan. Ca. 37.

After a bill to redeem, and a cross bill, &c. de-

creed, a bill of revivor and supplemental bill. Vide Gilb. 186.

A bill of revivor lieth not upon a decree of a long standing; but the party is to exhibit an original bill. Also a bill of revivor lies not to revive a decree made for costs only. 1 Chan. Ca. 2 Chan. Rep. 195. But 2: if a bill of revivor will not lie upon decree of a long standing, in case either the plaintiff or defendant be living.

After a cause has slept twelve months, there must be a subpana ad faciend' attornat. I Vern. 172. See

hereafter Of reviving Decrees.]

A bill of revivor may be brought either before or after hearing; it is sometimes brought to revive only, and then 'tis revived without answer, after appearance, upon motion, suggesting that the time for answering is out. But where it is brought to revive and answer, an attachment and all the subsequent process of contempt may issue as on any other bill, if the defendant answer not in time.

Bill of revivor can only be brought by the heir as to the realty, and by an executor or administra-

tor as to the personalty.

Where a fuit abates, plaintiff may bring an original bill, or a bill of revivor, at his pleasure. Vern.

160

Where no proceedings have been had for a year, the suit may be revived by subpana scire facias; and where you may revive by subpana scire facias, you may at your election by bill of revivor. Chan. Ca.

378.

If there be more plaintiffs than one, and one dies, the rest may proceed without reviving. So administrators, durante minore aetate, or infants when they come of age, no revivor needful. Part of the matter being omitted indrawing up the decree, a bill of revivor lieth to revive those matters, and in this case went to the whole decree. 1 Chan. Ca. 37.

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A bill was dismissed with costs which were taxed. A bill of revivor was brought singly for costs, and it is demurred to; it was said in this case, that a bill of revivor was not proper, but though the bill was dismissed, yet it was not so much out of court, but that the party who was to pay the costs was still liable to the process of the court for such costs, as attachment, &c. And here the demurrer was allowed.

A bill of revivor was brought to revive all proceedings, and particularly an order by consent; the defendant demurred to the bill, for that it sought to revive that order, whereas the seme was a party to it, and she being married since her executorship, consequently her consent was determined; and the demurrer was allowed. Hampden v. Brewer, I Chan. Ca. 77.

After a decree to account, and an abatement by defendant's death, his representative may revive, both being in nature of plaintiffs. *Prec. in Chan.* 197.

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The court may direct the suit to stand revived without taking out a subpana for that purpose. Barnard, Rep. in Chan. 85.

In case of abatement it is not necessary to revive against a defendant that has not answered. I Vern. 308.

Plaintiff brings a bill of revivor, defendant pleads a former bill of revivor, if that plea is not sufficient for some special circumstances in the case, the court will order the cause to stand revived without sub-pana. Barnard. Rep. in Chan. 85.

Mortgagor brings a bill to redeem, an account is decreed, a report made, and diverse proceedings are had in the cause, and the plaintiff is ordered to pay costs and deliver possession.—The defendant (the mortgagee) dies, the executor may revive this suit, and have the benefit of the order for costs. 2 Vern. 296.

Where

Where there is a decree for a mutual account, plaintiff on his own bill may be decreed to pay the balance of the account, and defendant may revive as well as the plaintiff in case of an abatement. 2 Van. 297.

An affignee cannot bring a scire facias to revive a decree, unless the decree be signed and inrolled; but afterwards he may. 1 Vern. 238.—But the Editor apprehends that he may bring a bill in nature of a bill of revivor.

Baron and feme, in right of the feme, exhibita bill, and the baron dies, the feme may proceed by bill of revivor. 2 Freem. 133.

As bills of revivor are to revive suits, and proceedings thereon are abated, the order for the revival must be served on the adverse clerk in court, to the end that he may take notice, that the suit is revived, and that such revivor is right. Vide 2 Vol. Abr. Eq. 2. Note to Ca. 2.

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In an account both parties are actors, and either may revive. 1 Will. 743. — Select Cases in Chan. 54.—1 Will. 263.

In a bill of revivor it may be necessary to insert so much new matter as is needful to shew how the party becomes intitled to revive. Comyns's Rep. 590.

In Backbouse and Middleton's case it was said, that a devisee cannot bring a bill of revivor; in this case a bill of revivor was brought, which was dismissed, but without prejudice to a new bill, which was afterwards brought, setting forth the original bill and the former proceedings; and this bill was proceeded upon, and answered. An assignee cannot revive. Cheesebrooke v. Hazlewood, 24 El.

A suit cannot be revived in part, but the whole proceedings, bill, answer, &c. and all orders, must stand revived. 2 Chan. Ca. 80.

An executor (his testator dying after publication)

is not permitted to exhibit a new bill upon that matter whereby to make further proofs, but is to hold to a bill of revivor, and fo proceed upon examinations fo published in his testator's life-time.

An injunction bill may be revived.

This bill is generally brought by a devisee or purchasor, who not being in privity with his testator, or vendor, cannot bring a bill of revivor; tho he shall have the same benefit and advantage of a decree as an heir or executor, and the defendant is not at liberty to make a new defence.

Upon a bill in nature of a bill of revivor against adevisee, the devisee cannot dispute the justice or validity of the decree, for then a devisee would be

in a better condition than an heir.

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He who claims only as heir by proviso, or per formam doni, cannot revive, but must bring his original bill in nature of a bill of revivor. Ozbourne v. Usher 1721. Wingefield v. Whaley 1732. MS. Rep. 4 Vin. Abr. 432. pl. 17.

Bill of revivor may be taken pro confesso, against an absconding defendant, under Stat. 5 Geo. 2.

1. 25. See 3 Tr. Atk. Rep. 690. pl. 260.

On bill of revivor, plaintiff cannot dispute detree, though defendant may. 2 Vez. Rep. 232.

There cannot be a bill of revivor for costs alone, in case party, intitled to them, dies, before (1) they are taxed. By Earl Chancellor Hardwicke. See Cas. in Chan. 21, 54. See 2 Vol. 119.

Bills of review.

A Bill of review is after a cause is heard, and the decree signed, complaining of some error in law, or mistake appearing in the body of the decree;

⁽¹⁾ For if he dies after they are taxed, there may.

or when some new matter is discovered that was not discovered at the time of making the decree.

For exhibiting of this bill, you must obtain an order, either on motion, or petition, to the Chancellor, (tho' commonly on petition) which is generally on depositing fifty pounds with the Register. And there must be an affidavit annexed to the peti-

tion. [See more bereafter.]

Ruled by Talbot Lord Chancellor, that if a decree be obtained, and that decree inrolled, fo that the cause can't be reheard upon petition, the party can in no case set aside this decree, or obtain relief against it by an original bill; for then the decrees of the court would be opposite and contrary one to the other, which would breed the utmost confusion: Wherefore, the only remedy in such case is by bill of review, which must be either for error appearing on the face of the decree, or upon some new matter, as a release, receipt, &c. proved to have been discovered fince; for unless this relief were confined to fuch new matter, it might be made use of as a method for a vexatious person to be oppressive to the other side, and for the cause never to be at rest. ? Will. Rep. 371. Taylor v. Sharp.

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The bill of review is in nature of a writ of error at common law; it recites shortly all the proceedings with the decree; and here it is to be noted, all decrees are to be inrolled from the original proceedings; they are not inrolled from the Register's recitals of the decree, because the Six-clerk certifies he has examined them with the records, and that

they agree together.

The bill of review is to affign proper errors against the decree and proceedings; it must be error apparent upon the face of the record, since the court can't judge beyond that. If any new deed is found out, or a new discovery, since the hearing, which the party had not knowledge of at the hearing, and

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has fince then come to the knowledge thereof, he must annex an affidavit of the matter, and pray an answer from the adverse party; and he must, upon filing his bill of review, serve the party with a subpana ad revivendum.

demurrer, that there is no error in the decree; he rarely answers, unless ordered by the court.

Bill of review cannot be brought, upon decree (1) figned and inrolled, for new and supplemental matter in being, at time of making decree, but discovered and come to knowledge (2) afterwards; without leave of court, and depositing 50 1(3).

There was once a precedent where such a decree was allowed, though the party had fince the decree come to the knowledge of two letters, which feemed to overthrow the decree, and all the proceedings depending thereon; and the court in that cale, would not put the party to answer to those two letters, but allowed the demurrer. The reason given in this case was; that the party might have found out thele two letters before the hearing, fince he had them in his cultody; and if that practice hould take place, it might overthrow all the decrees in the court; and if this should be allowed as a preedent, a man might take up his defence when he pleased, whereas his whole defence ought to be made at once, and before the hearing. It was faid the lords reverfed that allowance of the demurrer,

⁽¹⁾ In Earl Chancellor Hardwicke's time, if decree had not been figned and inrolled; supplemental bills, in nature of bills of review at large, were flet, without leave of court, or deposit; and then petitioned to rehear or speal; his Lordship made an order to put those improper bills of review (which he observed were growing into abuse, and several of them brought haveration) under like restraint as others; but declaring petition for rehearms, or appeal, to bring former properly before court, to be absolutely necessary. 2 Vez. 597, 598.

^{(2) 2} Vez. 756.

^{(3) 2} Vez. 597. VOL. I.

and ordered the party to answer the bill of review. Vide the case of Henriques and Jacobson.

The demurrer being fet down to be argued, the court proceeds to affirm or reverse the decree, and the prevailing party takes the 501. deposit.

Forgetfulnels or negligence of parties under no incapacity, no foundation for a bill of review.

No objection to be made upon a bill of review, that is not assigned for error. Walkins ver. Price, 1718. 4 Vin. Abr. 414. pl. 6.

In a bill of review, a new supplemental bill may

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be added. I Vern. 135.

Objections to a Master's report cannot be assign-

ed for error upon a bill of review.

Bill of review cannot be brought after twenty years, though error appear in the decree. Chan. Ca. 382.

No bill of review on a decree on the statute of

Charitable uses. Chan. Ca. 385.

Infant may bring a bill of review. Chan. Ca. 384.

Plaintiff allowed to bring a bill of review without paying costs in the original cause, he swearing he was not worth 401. besides the matters in question. Vern. 261.

Plaintiff not allowed to bring a bill of review, unless he would perform the decree, or would wear he was unable to do it, and would surrender himsel to the Fleet, to be there until the matter of the bill of review was determined. Vern. 117.

Fine and non-claim, is a good bar to a bill of

review. 2 Vern. 190.

Appeal to the House of Lords from a decree in Chancery, and upon the petition of the appellant to examine witnesses in the cause, it was rejected and the petition dismissed; the appellants the brought a bill of review, and it was decreed that the defendants should either answer the bill of review or demur on the errors in it, without costs on e

ther fide; and the benefit of the order of difm from by the Lords was faved to the defendants. Finch 469.

In a bill of review you may have a new supple-

mental bill. I Vern. 135: 01 10190

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Bill of review and error affigned in the decree— Plea and demurrer thereto—Demurrer in part al-

lowed, and in part over-ruled. Finch 36.

Bill of review not allowable on a decree of commissioners of Charitable uses; examined in Chancery, and confirmed in part, and altered in part. So certified on reference out of Chancery to Sir R. Crew, C. J. Sir John Walter, C. B. Sir W. Jones and Sir George Crook. ——And Jones said, So it is upon adecree made upon the Stat. 37 H. 8. (tythes in London) by the major part, and confirmed by the Chancellor. Cro. Car. 40, 350, 351. [See 2 Eq. Cas. Abr. 173.]

Bills original after decrees.

A N original bill may be brought to execute of confirm a decree; or to carry an act of Parlament into execution, or to revive or inforce the performance of decrees. A decree has been explained by original bill, upon a matter subsequent to the decree; but may not be explained on a matter precedent to it. And this bill lies to put a period to a temporary decree, &c. After a decree for the total and a second bill may be exhibited for the mean profits, and for farther affurance, &c.

A feme covert, after separation from her husland, had a decree for alimony, which decree was confirmed on a bill of review; but the husband king willing to be reconciled to his wife, and to contabit with her, exhibited an original bill to set fide the decree; and it was held by Finch, Lord Letter, assisted by North, Chief Justice, to be a

X 2 proper

proper bill. 1 Chan. Ca. 250. Where it is faid to have been resolved, that where a decree is temporary, or for special ends, an original bill lies, to fhew that the purposes of the decree are fatisfied, and to put a period to it. Vide 2 Chan. Rep. 128.

An original bill to execute a decree of lands against a purchaser, who claimed under parties bound by that decree, has been allowed good on a demurrer put in by the defendant. I Chan. Ca. Potents of Charged to be with the condition of

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If a bill be brought to have the benefit of a for. mer decree, the plaintiff cannot examine witnesses, much less the same witnesses to the matters in issue in the former cause; but on such a bill the count may examine the justice of the former decree; but then it must be by proofs taken in the cause wherein that decree is made. Per cur', 2 Vern. 209, Vide 1 Chan. Ca. 45. where it is faid, that no original bill ought to be brought to explain a decree, on any matter precedent to the decree.

A decree cannot be fet aside by an original bill unless in case of apparent fraud. Cases in Eq. Temp

Talbot 301.

An original bill, barely in nature of a bill of re vivor, to revive or inforce former proceedings, and not more comprehensive than a bill of revivor only does not open the first decree to have it looked into but if it be to enforce a decree, or carry it farther then it opens the cause. Pasch. 1706. Vare an Wordall. Eq. Caf. Abr. 83.

After a decree inrolled the party can have nor lief by an original bill. 3 Will. Rep. 371. [Vil

2 Vol. Abr. Eq. (H) p. 177.]

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Of the method of filing bills, and of fubpoena's and other processes to inforce appearances; with some observations on contempts in general,

A FTER the bill is drawn, ingrossed, &c. according to the instructions before given, it is to be carried to a clerk in court to be filed; who first enters it in his cause-book, and then in the general bill-book, at the west end of the office, after which he marks it at the top with the day of the month and year, and subscribes his name at the bottom on the left side, and then delivers it to his Six-clerk, if in his study, to be filed; but if the Six-clerk be absent, he puts it over his study door, and the Six-clerk, having entered it also in his book, files it.

This being done, the clerk in court or folicitor makes out a fubpana note thus:

Subpoena C. D. Gent. to appear in Chancery ret.

at the fuit of A. B. Esq;

And he must put his name at the bottom of the

This being entered in his fubpoena book, is to be carried to the fubpoena office with 4s. if but one or two defendants names, but if three defendants names, you pay 4s. 6d. upon which they make out the subpoena, and get it sealed, after which it is left at the clerk in court's seat by the bag-bearer of the office: or if bespoke by the solicitor, it remains in the office for him to send for or fetch it.

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Note 3

Note; a man and his wife are reckoned but one defendant in a subpoena, and no more than three de-

fendants can be put into one subpoena.

A subpoena is a writ by which persons are called or subpoenaed into Chancery to answer a bill, where the common law hath provided no ordinary remedy: And it is the first and leading process of this court.

Of publications setting down causes, and bearings.

PUBLICATION and hearing of the cause, are not to be of one Term, unless by special order.

Where a rule is given to pass publication, and an order to enlarge it obtained, then publication is said to pass by order.

Every ordinary rule expires that day fe'n-night.

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A rule is founded on some general order, or course of the court, and issues without motion or

petition. Chan. Ca. 326.

When a cause is set down upon depositions, you must shew the same to the Six-clerk, (if set down with him) and acquaint him when publication passed, and whether by rule, order, or consent, and if the same is set down the Term publication passed, you must shew the order for that purpose.

All parties may have recourse to the Register's book without see, to see how the cause stands, that they may be ready at the day of hearing; for if no body attend when it is called, it will be struck out

of the paper.

If the plaintiff can proceed to a hearing, without proof, on bill and answer, it is the best, provided there be a sufficient matter for the court whereon to ground a decree. But if on hearing, the court is of opinion there is not a sufficient foundation for a decree

decree, they will either difmis the bill, or give

leave to reply, on payment of costs.

Where a plaintiff proceeds so far as to proof, and upon the hearing it appears that he might have had full relief upon bill and answer; notwithstanding he is to be relieved in the same cause, he shall pay costs to the defendant.

A note of all causes, &c. set down for hearing, is to be fixed up in the Register's office two days before the same are appointed to be heard. Ord.

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Form of a subpoena to answer.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. To A. B. C. D. and E. F. greeting. For certain causes offered before us in Chancery, we command and strictly injoin you that laying allother matters aside, and notwithstanding any other excuse, you personally appear before us in our said Chancery the day of instant for next ensuing wheresoever it shall then be, to answer concerning those things which shall be then and thereobjected to you, and to do farther and receive what our faid court shall have considered in this behalf; and this you may in no wife omit, under the penalty of one hundred pounds: And have there this wit. Witness ourself at Westminster the _____day of - in the - year of our reign.

Note; The indorsement on the writ is thus: By the court to answer at the suit of G. K.

To each of these subpana's containing more names than two, there are two labels or small slips of parchment, containing all the defendants and X 4

the plaintiff's name, and the day of appearance, And there cannot be above three defendants names in one Subpana. But as holband and wife are accounted but as one person, so their names are also accounted but as one. You must take care, or rather the officer of the Subpana office, who makes out the subpana, ought to take great care, that there be no mistake in the body of the subpana; for if there is, and any of the defendants find it, he may take advantage of it, and refule to appear to the plaintiff's bill; and if profecuted for want of an ap. pearance, he may refer the service of the subpana for irregularity, and obtain costs; and the officer of the Subpana office who made out the subpana is in strictness liable to pay those costs. A subpana to answer is returnable immediate

when the defendant lives in town or within ten miles; and on an (a) affidavit made and filed thereof, you may either petition or move for an order

for a subpana returnable immediately against the defendant, and then carry your order and pracipe for an officer of a subpoena ret. immediate to the Subpoena office for

such subpoena to be made out: But these subpoena's are seldom made out but in Vacation time; for in

Term time it is needless to have it returnable immemediate, for it may be returnable any day in Term.

tend. Mofeley 42.

Mr. Solicitor General moved for a subpoena returnable immediately against Mr. Huggins, (who was committed to Newgate for murder, of which he was indicted, and a special verdict found, but not yet argued) and that service of it on the turnkey, or keeper of Newgate, might be good service, because his servant had denied them access to him.

Lord Chancellor King.

No process can be served on a prisoner committed at the fuit of the crown, without leave, though if

(a) The plaintiff may fue a fubpæna returnable immediatethe court, without the ufual affidavit, because he is prefumed al-Ways to at-

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he once appears, you may go on against him; but as I am one of the commissioners of Oyer and Terminer, before whom he was tried, I will make an order, that the keeper of Newgate shall admit you in, to serve the process on Mr. Huggins. Moseley 237. Pl. 128. Anon.

If the defendant lives in London, the affidavit is thus.

Between A. B. plaintiff,
C. D. defendant.

A. B. the plaintiff in this cause maketh oath, that the defendant C. D. lives in Friday-street (or other place) in the city of London.

Sworp, &c.

But if the defendant lives near London, then the

A. B. &c. maketh oath, that the defendant C. D. lives at, &c. which faid place is about miles distant from London.

For a petition for a subpana returnable immediately, vide petitions.

And where there are many plaintiffs all of them need not be named either in the pracipe or writ, but only say, at the suit of the sirst plaintiff and others; or if there be two plaintiffs, say the sirst plaintiff and another: But all the defendants are to be named.

When a fubpoena is returnable on the last day of the Term, and the fubpoena served that day before the rising of the court, if the defendant lives twenty miles or more from London, he has eight days after to appear in and no more; and if served in London or within ten miles thereof, he has but four days to appear in; and a defendant living twenty miles off may have a commission to take his answer in the country, returnable the first return of the next

Term; but living in London he has eight days exclusive from the day of his appearance to answer.

Upon a subpana returnable immediate the party is bound to appear in four days after service of the subpana, and if he does not answer in eight days after appearance, then an attachment may immediately after be made out against him. And here it may not be amiss to observe, that there must be sisteen days between the teste and return of every process of contempt after the subpana; that is, where the defendant cannot be arrested on such process; for where you arrest the defendant on such process, you may make that process returnable when, and as soon as you think fit.

A fubpana may be made returnable and ferved the same day on which it is sealed; but it must be served before the court rises, otherwise it is not good service, and the defendant is not bound to

appear thereto.

It must be served before noon of the last day of the return; and is good service in the night, if before the return, or on a Sunday, if the subpoena be

not returnable that day.

When the business is done at a General Seal, you pay as aforesaid; but if it be at a Private Seal (which in cases of great importance may be necessary) you pay two guineas for opening the Seal, over and above the sees of the writ; but you pay no more than 3 s. 6 d. extraordinary for sealing every common writ, where a Private Seal is obtained on any extraordinary occasion, for sealing a commission of bankruptcy, or the like.

This writ is to be served before the return thereof, either by delivering the writ itself under seal to the desendant, or by shewing him the same under seal, and delivering him the label thereof. And when there are more persons than one in the subpoena, it is usual to have a label, which is always personally

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ferved on the first of the defendants you can meet with, and the body under seal shewn to him: And if there be three desendants, you have two labels to your subpoena, and the next desendant you can meet with, you must also personally serve with the other of the labels, and also shew him the body under seal; and then the body of the subpoena under seal may either be delivered to the last desendant, or it may be left at his dwelling-house with one of his samily, or with the master or mistress or servant of the house where the desendant lodges. And the body of the writ under seal must always be shewn to such desendants as are served with labels.

A. that served the subpoena deposed, that he hung the same upon B.'s door, and within half an hour after saw him abroad with a writ in his hand, which he supposed to be the subpoena. Attachment awarded, and B. committed to the Fleet for his non-appearance. Cary's Rep. 57. Richers and Stillman.

'Tis conceived that the label ought to be left with the party himself, and that the leaving thereof with his wife, or servant, has been often doubted whether it be good service or not; but any neglect of this kind seems to be salved by the parties subsequent appearance.

Affidavit of serving a subpoena to appear.

Between A. B. plaintiff, C. D. defendant.

G. H. of, &c. maketh oath, that this deponent did on the ——day of —— last past, serve the defendant C. D. with a subpoena, issuing out of and under seal of this honourable court, by delivering the body of the said subpoena under seal, as aforesaid, unto L. the wife of the said defendant.

* Tho' the place be left out, the affidavit will be good.

C. D. at * his the faid C. D.'s house or usual place of abode, fittuare in Fleet-Street, London; by which faid fubpana the faid defendant C. D. was commanded to appear in this honourable court the day of at the fuit of the above-named plaintiff, as appeared unto this deponent by the label of the faid subpoena.

G. H. Sand Strain and John Strain

Sworn, &c.

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Affidavit of serving a subpoens on the day of return.

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Between A. B. plaintiff, C. D. defendant.

G. H. of, &c. maketh oath, that he this deponent did, about the hour of ten of the clock in the forenoon of the day of personally ferve the defendant C. D. with a subpoena, iffuing out of and under feal of this honourable court, by leaving the body of the faid subpoena with the faid defendant C. D. under seal as aforesaid; by which said subpoena, &c. (as in the former.)

Where feveral defendants who are inferted in one subpoena are served, the affidavit is thus:

> - plaintiff. Between A. B. — — — C. D. E.F. and G.H. defendants.

A. B. of, &c. maketh oath, that he this deponent did on, &c. personally serve the defendant C. D. with a subpoena iffuing out of and under seal of this honourable court, by delivering unto the faid defendant a label of the faid subpoena; and this deponent did at the fame time shew unto the said defendant the body of the faid subpoena, so under feal as aforefaid; and this deponent did also on the fame day deliver another label of the faid fubpoena to the defendant E. F. and at the same time shewed him

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wed him A. B. Sworn, &c.

It has been held good service (if a person keeps the door of his house shur, and refuses to open it) to leave the writ under feal hanging upon the door of the house, or to put it into the house under the door, or within the windows; but none of these are good fervice, unless it can be proved that fuch Subpoena afterwards came to the defendant's hands. and that he was in the house at that time, or had notice of it, &c. and if the defendant cannot be found, or be beyond the feas, on affidavir thereof, if the bill is to be relieved against an action at common law, then the court will, on motion or petition, grant an order that fervice on his attorney at law, be deemed good service of the defendant; and such order and fubpoena being ferved on such attorney. he is bound to appear; and if he refuses, on an affidavit being made of ferving fuch attorney at law with such order and subpoena, and the affidavit being filed, you may make out an attachment against the defendant for want of an appearance, and thereupon move the court for the common injunction to flay the defendant's proceedings at common law against the plaintiff, which is granted of course; to where a subporna is had against the husband and wife,

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wife, service on him alone, and giving notice of its being against him and his wife, is good as to both. If a subpoena be served on the same day on which it is returnable, if it be before noon, or at any time before the rising of the court, the service is good. And if a subpoena be served the same day on which it is sealed, if it be before the rising of the court, it is also good. The defendant being duly served with a subpoena, and not appearing, upon an affidavit thereof, an attachment may be issued against him; the form of which is as follows, viz.

Attachment.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth; To the Sheriff of _____, greeting. We command you to attach _____, so as to have him before us in our court of Chancery ____ wheresoever the said court shall then be, there to answer to us as well touching a contempt which he, as it is alledged, hath committed against us, as also such other matters as shall be then and there laid to his charge; and farther to perform and abide such order as our said court shall make in this behalf: And hereof sail not, and bring this writ with you. Witness ourself at Westminster, the _____day of ____ in the _____ year of our reign.

To the bottom of this writ, on the right hand side, put the surname of the Master of the Rolls, and the Six-clerk in whose division the writ is made out: And indorse your writ, By the court, at the suit of A. B. for want of an appearance, or for want of an answer. And about the middle of the back of the writ put the surname of the clerk in court that makes out the writ,

Note; You may move the court, or petition his

Honour the Master of the Rolls, to have it returnable immediately if the defendant lives within ten miles of London. The same affidavit will do as for a subpoena returnable immediately; but for a petition, vide under that head.

If a non est inventus is returned by the Sheriff, a proclamation directed also to the Sheriff, iffues a gainst him; the form of which is as follows. viz.

The writ of proclamation.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. To the Sheriff of greeting. We command you on our behalf, to cause publick proclamation to be made in all places within our bailiwick, as well within liberties as without, wherefoever you shall think it most convenient, that A.B. do upon his allegiance, on personally appear before us in our court . Here put of Chancery, wherefoever it shall then be: And nevertheless, in the mean time, if you can find the faid A. B. to attach him, so as to have him before us in our faid court, at the time before mentioned, there to answer to us as well touching a contempt, which he hath, as it is alledged, committed against us, as touching those things which shall be then and there laid to his charge, and farther to perform and abide fuch order as our faid court shall make in this behalf: And hereof fail not, and bring this writ with you. Witness ourself at Westminster theday of --- in the --- year of our reign.

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To this writ subscribe the surname of the Master of the Rolls and Six-clerk; and indorfe it (as before) with the clerk in court's furname about the middle of the back of it.

This writ being also returned non est inventus, and defendant standing farther in contempt, a com-

mission of rebellion may iffue against him; the form of which is as follows, viz.

Commission of rebellion.

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GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the fairh, &c. To A. B. C. D. E. F. and G. H. greeting. Whereas by publick proclamations made on our behalf by the Sheriff of Middlesex in divers places of that county, by vir. tue of our writ to him directed, A. B. hath been commanded upon his allegiance personally to appear before us in our court of Chancery at a certain day now past; yet he hath manifestly contemned our faid command: Therefore we command you, jointly and feverally, to attach, or cause the faid A. B. to be attached, wherefoever he shall be found within our Kingdom of Great Britain, as a rebel and contemner of our laws, fo as you have him, or cause him to be before us in our said court, on , wherefoever it mall then be, to answer to us as well touching the faid contempt, as also such matters as shall be then and there objected against him; and farther to perform and abide fuch order as our faid court shall make in this behalf: And hereof fail not. We also hereby strictly command all and fingular Mayors, Sheriffs, Bailiffs, Conftables, and other our officers, and loyal fervants and subjects whomsoever, as well within liberties as without, that they by all proper means diligently aid and afflift you, and every one of you, in all things in the execution of the premises: In testimony whereof we have caused these our letters to be made patent. Witness ourself at Westminster -day of --- in the year of our reign.

To this writ subscribe the Master of the Rolls and Six-clerk's names as before, and indorse it,

By the court. A commission of rebellion, for want of an appearance, (or for want of an answer) at the suit of C.D. And towards the bottom put the Six-clerk's surname, and after that the clerk in court's surname.

When you have made out the commission of rebellion, you must take two docquets thereof; one upon a half-sheet of double six-penny stamped paper, and the other upon half a sheet of paper unstamped: the form of which docquets are thus:

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THE King, and so forth. A commission of the sherist rebellion directed to A. B. C. D. E. F. and of G. H. jointly or severally to attach J. K. defendant, for want of an appearance (or for want of an answer) at the suit of L. M. plaintiss, returnable——.

Witness the King at Westminster the——day of ——in the——year of his reign.

Here put the Master of the Rolls and Six-clerk's names; after that fold it up as you do an order, and on the back of the docquets write at the top, Commission of rebellion, Mr. against K. and towards the bottom, the Six-clerk and clerk in court's surnames; and then give both these docquets, with the commission, to the bag-bearer, who will get that docquet that is stamped signed by the Lord Chancellor, and after that leave it with the clerk of the Hanaper office, and the other lest with one of the entring Registers, who marks the docquet stamped with an intratur, before it be signed by the Lord Chancellor.

If the defendant stands farther in contempt, then on a non est inventus returned by the commissioners, the court may be moved for an order for a Serant at arms; and if he cannot be taken upon the serieant at arms's certificate, a sequestration may be issued against him, upon moving the court for an Vol. I.

Of Precents and Praceedings

order; which, upon producing the Serjeant at arms's certificate, is always granted of course; the form of which sequestration is as follows, viz.

Sequestration.

Here name the commissioners that are fequestrators.

CEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and fo forth; Whereas A. B. complainant, exhibited his bill of complaint into our court of Chancery against C. D. defendant: And whereas the faid C. D. being duly terved with a writ iffuing out of our faid court. commanding him, under the penalty therein mentioned, to appear to and answer the faid bill, hath refused so to do, and thereupon all process of contempt hath iffued against him unto a Serjeant at arms: And whereas the faid C. D. hath of late abfconded, and to concealed himself that the said Serjeant at arms hath not been able to find him, as by the certificate of the faid Serjeant at arms appears: Know ye therefore that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, any three or two of you, full power and authority to enter upon all the messuages, lands, tenements and real estate whatfoever of the faid C. D. and to take, collect, receive and fequefter into your hands, not only all the rents and profits of the faid meffuages, lands, tenements and real estate, but also all his goods, chattels and personal estate whatsoever: And therefore we command you, any three or two of you, that you do, accertain proper and convenient days and hours, go to and enter upon all the meffuages, lands, tenements and real estate of the said C.D. and that you do collect, take, and get into your hands not only the rents and profits of all his faid real estates, but also all his goods, chattels and personal

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personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall fully answer the complainant's bill, clear his contempts, and our said court make other order to the contrary. Witness ourself at Westminster, the day of in the year of our reign.

To this subscribe the Master of the Rolls and the Six-clerk's surnames, as before, and indorse, A commission of sequestration against C. D. desendant, at the suit of A. B. complainant.

If after the defendant has appeared, he does not answer in time, an attachment issues of course; and if he continues in contempt, the several before-mentioned processes go out against him of course.

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And when a defendant wilfully stands out all process of contempt upon an appearance, and refusal to answer; the court, after the return of the sequestration, will take the matter of the bill proconfesso, and decree it accordingly; but this cannot be done unless the defendant hath first appeared.

Of attachments.

A N attachment is the first process of contempt in this court. And as it is always founded upon some contempt of the court, so it is most commonly for not obeying the process or orders of the court.

An attachment (which is derived from the French, fignifying to take or apprehend by commandment of a writ or precept) differs from an arrest, in that he that arresteth a man, carrieth him to a higher power to be disposed of, but he that attacheth, keepeth the party attached, and presents him in court at the day assigned, as appears by these words of the writ, Præcipimus tibi quod attachias talem, & babeas eum coram nobis, &c.

Y 2

If you make an attachment returnable three cr four days after the teste, if you arrest the body it is good; but if you suffer the return to expire, and do nothing upon it, and then be obliged to make out another attachment, here you will be allowed but for one writ, in case you do any thing upon the second. After a writ of execution, and an attachment returned for not performing a decree, the court will not give the defendant leave to be examined, unless he gives security.

By the King's demise all process of contempt not executed, is determined, so that you must begin again at an attachment; but where process is executed, and a cepi corpus returned, then the process

stands good. Vern. 300. C. 295.

Attachment sued out and executed three days after the King's demise, though before public notice of his death, adjudged good, and well executed, and the proceedings thereon regular. Vern. 400.

C. 372.

It may generally be had of course, upon affidavit that the defendant was served with a subpoena, and appeared not: Or it may be had after an appearance, for want of an answer, without an affidavit; but it is upon an affidavit for non-payment of costs; or the non-performance of an order or decree.

As folicitor must serve his client with the order for taxing his bill of costs, and the Master's report, whereby such costs are ascertained, before he can take out an attachment for them. Barnard 266.

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In these attachments, and all other writs, regard is to be had to the jurisdiction and privileges of certain places, as the Cinque Ports, and the Counties Palatine of Lancaster, Chester and Durham; and the direction of the writs in such cases, is of a peculiar form: As for instance, where an attachment issues against an inhabitant of Hastings, Rye, Romney, &c. it is directed to the Lord Warden of the Cinque Ports.

And

And if the writ is to be executed within the County Palatine of Lancaster, then it is directed thus, viz.

of our County Palatine of Lancaster, or his to Lancaster. deputy, greeting. We command you, that by our writ under your seal of our aforesaid county duly issued, you command the Sheriff of our aforesaid county, to attach, &c. [as before.]

And if the attachment be awarded against any dwelling within the County Palatine of Chester, then it is directed to the Chamberlain of Chester in this form, viz.

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GEORGE the third, &c. To the Chamber-Attachment lain of our County Palatine of Chefter, or his to Chefter. deputy there, greeting. We command you, that by our writ under the seal of the County Palatine aforesaid duly to be made, you command the same Sheriff that he attach, &c.

GEORGE the third, &c. To the right re-Attachment verend father in God—by divine Providence to Durham. Lord Bishop of Durham, or his deputy there, greeting. We command you, that by our writ under the seal of the County Palatine aforesaid duly to be made, you command the same Sheriff that he attach, &c.

GEORGE the third, &c. To the Warden Attachment of our prison of the Fleet, or his deputy there, to the Warden of the greeting. We command you to attach, &c. Fleet.

GEORGE the third, &c. To the Marshal Attachment of the Marshalsea of our court of King's Bench, to the King's or his deputy there, greeting. We command you Bench. to attach, &c.

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And

And Note; Attachments for costs are of the like form as those above, only the writ is indorsed thus: By the court, for non-payment of costs (naming

the fum) at the fuit of A. B.

observe that in all cases where the Sheriff does not make his return of the writ, if directed to him, this court will amerce him; which amercements are to be estreated in the Exchequer, and are commonly five pounds. But it is usual to give the Sheriff a day for that purpose, and if he do not by that time return the writ, the court setteth the amercement: And sometimes the court, upon a notice of motion served on the Sheriff or Undersheriff, will order him to stand committed to the Fleet prison for not returning the attachment or

other process.

Note; If the attachment is directed to the Sheriffs of London or Middlesex, or any other corporation who have a grant of the fines and amerciaments, as London, Middlesex and Bristol have, and if the party is taken up upon the attachment, and a cepi corpus returned, then the plaintiff moves for a messenger upon the cepi corpus returned, and at the time of making the motion must produce the attachment and return to the court, and this motion is of course: And the court orders the party to be taken into the custody of the messenger till he hath answered the bill, cleared his contempts, and farther order. The reason of this proceeding is because, as is before observed, the estreats and amerciaments go to the Sheriffs themselves, and there is no other way left to do justice to the plaintiff, but by ordering the defendant to be taken into custody of the court's own officer: For the court cannot estreat the Sheriff as in other cases for not making a return, or not bringing in the body, by reason the estreats go to the Sheriff.

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The Sheriff cannot take bail on an attachment for not paying costs, but a messenger goes to bring in the party. Prec. in Chan. 331. Gilb. 85. Com.

Rep. 264. R. Raym. 723. contra.

Attachments must be entered in the Register's Vide 2 Will. book (and formerly they were also entered in the Rep. 657. house book; but this last is now disused) expressing the cause of iffuing the attachment. But the party that makes our the attachment usually first acquaints the adverse clerk in court; but this he needs not do unless he pleases.

An attachment after a decree for dismission is in nature of an execution at common law, and a general pardon may pardon the contempt, but not

the debt. Finch 253.

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If affidavit of service of subpoena be filed before return of the attachment, the arreit holds good. 1 Vern. 172.

Tefte, March 1767.

TTACHMENT against C. D. Nate to enter Middlefex, Gent. defendant, for want of his Register. appearance at the fuit of A. B. Efq; plaintiff, returnable.

To this the fworn clerk's name who enters it is subscribed, and the day it is entered, as above, and then it is to be left with one of the entring Regiflers, to whom fourteen pence is therewith paid.

Note; When a party is taken up upon an attachment (or any of the before-mentioned processes) he must pay costs, and either give his bond with fureties for his appearance, or enter his appearance with the Register. And after an arrachment with proclamation returned, no commission to answer hall be made, nor any plea or demurrer admitted, but upon special order obtained for liberty to put in such plea or demurrer.

When

Of Procestes and Proceedings.

When an attachment is duly obtained, it can not be discharged till the defendant has paid the costs, or tendered them to the plaintiff's clerk in court; but upon either such payment, or tender, and sling his answer, plea or demurrer, he is discharged of course.

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Attachment with proclamation.

HAVE already shewn how this process issues; the proceedings upon which see before.

Note; Where a corporation, as the Mayor and Aldermen of London, or any other corporation, are made defendants to a bill, and they refuse to appear to or answer a bill, or to perform the decree of the court, such corporations cannot be attached; but instead of an attachment you make (of course) a distringus to the Sheriffs of the city, or to the Sheriff of the county where such corporations are resident; the form whereof is as follows, viz.

Distringas.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth: To the Sheriff of the county of—, greeting. We command you to make a diffress upon the lands and tenements, goods and chattels of—— within your bailiwick, so as neither they said—— nor any other person or persons for them, may lav his or their hands thereon until our court of Chancery shall make other order to the contrary; and in the mean time you are to answer to us for the said goods and chattels, rents and profits of the said lands, so that the said—may be compelled to appear before us in our said court of Chancery—whereso ever it shall then be, there to answer to us as well

touching a contempt, which they, as it is alledged, have committed against us, as also such other matters as shall be then and there laid to their charge; and farther to perform and abide such order as our said court shall make in this behalf; and hereof fail not, and bring this writ with you. Witness ourself at Westminster the—day of—in the—year of

our reign.

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Indorse, By the court, at the fuit of A. B. for want of an appearance or answer. This writ must also be entered with the Register in the same manner as you do an attachment. This is a close writ. and made up as an attachment, and, when fealed. you must deliver it to the Under-sheriff, who is bound to make a return thereof, after it is returnable, and there must be fifteen days between the teste and return. And when the sheriff has made his return, you carry it to your clerk in court, who thereupon makes out an alias distringas. which is the same with the distringus, only after the words We command you, infert, As we bave before commanded you, to make a diffress upon the lands, tenements, &c. And then deliver this alias distringas to the Under-sheriff, which must also be fifteen days between the teste and return: And it being returned by the Sheriff, you carry it to the clerk in court, who thereupon makes out a fluries distringas, which is the same with the distring'as, only after the words, We command you, insert, As we have twice before commanded you, to make a distress upon the lands, tenements, &c. And this being also returned by the Sheriff, which must also be fitteen days between the teste and return; and being returned by the Sheriff, you get counsel thereupon to move for a sequestration (upon a pluries distringus returned) against the said corporation, to sequester all the lands, tenements, goods and chattels of the faid corporation until they

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they appear to or answer the plaintiff's bill, or perform the decree, and the court make other order to the contrary; which sequestration cannot be discharged till the corporation has performed what they are injoined to do, and paid the costs of the several distringuists, and the sequestration, and the commissioners their fees for sequestration, which will they move to discharge the sequestration, which will

be discharged of course.

And if the defendant be a Member of Parliament, he must be served with a copy of the bill and a subpana when privilege of Parliament is our, and if he refuses to appear to the bill in due time according to the course of the court, you make an affidavit of the service of the subpana and a copy of the bill, and move for a sequestration against the defendant, to fequefter his personal estate, and the rents and profits of his real estate, which the court grants of course, unless the defendant, being personally served with such order, shall within eight days after fuch fervice shew unto the court good cause to the contrary; And if after the defendant is ferved with this order, and he still perfift in refuling to appear to the plaintiff's bill, then upon making an affidavit of the service of this order, you may move the court after the eight days are expired, to make the order absolute: And when fuch order is drawn up and entered, you may have the fequestration made out against the defendant. And the same method is observed against a defendant a Member of Parliament for want of his anfwer, or for non-performance of a decree, &c. after being served with a writ of execution thereof: For his body cannot be attached by reason of his being

But see now a Member of Parliament.

Oce. III. c. Where a cause, either against a Peer or a Comso, whereby moner, stands in the paper, and is called on, but is taken a plaintiff cannot proceed, privilege being in the case; way. er.

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the court never strikes out the cause, as they do in other cases, where the party is not ready; but they let it stand over from one Term to another, till privilege is out, and never put a party to sue out a new subpena to hear judgment. And the court generally makes the Register to put all privileged causes, which have been put out on that account, the very first causes in the paper, when the court sits after privilege is out, and if this should be otherwise, it often falls out where a Peer or Commoner makes default at the hearing, the plaintist can't make his decree absolute till the coming in of privilege a second time, which is what the court takes care to avoid.

So where a defendant is a Lord, or Peer, or a Bishop of this realm, you pray in the process of your bill for the Lord Chancellor's letter miffive to be directed to fuch defendant, defiring him to appear to and answer the said bill: And after such bill filed, you petition the Lord Chancellor for his letter against the said defendant, which his Lordship having granted, you ferve the defendant therewith, and also with an office-copy of the said bill; and it he refules upon fuch fervice to appear thereto, you then serve him with a subpana to appear to the faid bill; which if he refuses to do, then upon making an affidavit of serving the defendant with such letter, copy of the bill, and subpana, you then, upon filing fuch affidavit, move the court for a fequestration, as before; which the court orders, unels cause in eight days after service of the order, as before. And you must observe such method against a Peer, Lord, or Bishop, as you do against a Member of Parliament, as aforesaid. picaded too seem

For a petition to the Lord Chancellor for his Lordship's letter missive to a Noblemen, vide antea, fol. 91.

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Of the privilege of officers, clerks, and suitors, in the court of Chancery.

PRIVILEGE belongs to all the Masters, Ministers, Officers, and known Clerks of the court, &c. and if any person intitled to privilege be arrested by the process of any other court, he may bring his writ of privilege, containing a supersedeas; and suitors and witnesses attending on this court being likewise privileged, if they are arrested, they may have a temporary supersedeas of privilege, and be enlarged thereupon.

A defendant coming to execute a commission, and being arrested, had an babeas corpus cum causa, and was set at liberty by this court. 22 Eliz.

A plaintiff arrested here when he came up to examine his witnesses, was discharged by supersedent of privilege. And a plaintiff coming up to court to prosecute his cause half a year after his bill was exhibited, was arrested in London, and had his privilege; it appearing he came up only for that purpose.

An officer of this court being arrested produced his writ of privilege, which the bailiff refused, and obliged him to put in bail before he would

discharge him.

Lord Egerton committed the bailiff to the Flut

for the contempt.

Privilege is not to be pleaded in the negative; as that an officer ought not to be sued elsewhere but in his own court, without saying it is usual for them to be sued there, &c. and it should not be pleaded too general.

As a writ of privilege exempts the possessor from serving upon juries, in offices, or in any capacity that may in the least disturb or molest him in his profession, it is very necessary for all officers,

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attornies, &c. who are intitled thereto, to have one ready to produce upon occasion, the expence thereof being nothing more than the parchment and stamps, which are only treble 6 d. it may not therefore be improper to give a precedent of one, intended for a clerk in court, but (properly varied) may serve any other officer of the court. They were formerly in Latin, but now the translation runs thus:

Writ of privilege.

TEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth; To all and fingular our Justices, Judges, Sheriffs, Escheators, Mayors, Aldermen, Bailiffs, and Constables, and to all other our Officers, Ministers, and faithful Subjects whatfoever, as well within liberties as without, to whom these our letters shall come. Whereas from our dignity, as well as that of our royal progenitors, heretofore Kings of England, and also from the ancient custom of the high court of Chancery, of us, and our aforesaid progenitors, from time immemorial it hath obtained, and been approved of, that our Chancelfor of England, or Keeper of the Great Seal of England for the time being, and other residentiary Officers, Clerks, and Ministers of the said court of us and our progenitors, who were prefent and ready to obey and daily ferve our commands in our faid court of Chancery, for the public good of our faid kingdom, should as to their men-servants, lands, tenements, estates, goods and chattels, be free and acquitted, and ought to be, and for all times past for time immemorial have been accustomed, according to the privilege and liberties of our faid court, to be discharged from appearing

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bearing or answering before any of our fecular Justices, Judges, Officers and Ministers whatever (except before our Chancellor of England of Keep er of the Great Seal of England for the time be. ing) upon any pleas, complaints, trespasses, or demands whatfoever, which do not concern our person, (pleas touching freehold and felony, and appeals, only excepted) or by reason of any sum. mons, or panels, or upon any affizes, juries, or recognizances to be taken before the same Justices, Judges, Officers, or Ministers, and that they should not be chosen to any of the offices of collector of the subsidies of Afteenths, or tenths, church-wardens, constables, tiching-men, surveyor of the highways, overfeer of the poor, or to watch and ward, or to any other offices, fervices or attendances, to be done or exercised in any other place, belides our court, against their will, or whereby they may be drawn or compelled to be arrefted, impleaded, imprisoned, elected or burthened in any manner whatfoever, which they have not been accustomed to be in times past; which said custom privilege and liberty, was received and approved of by the King, and his Earls and Barons and others, in a Parliament held at Wesiminster in the eighteenth year of the reign of our royal progenitor Edward the third, as by the indorfement of a certain petition exhibited to the King himfelf in the faid parliament, and inrolled in the rolls of the faid parliament, fully appears. We therefore, willing that the faid custom, liberties, privileges, and jutisdictions should be inviolably observed, and being unwilling that our Officers, Clerks, and Ministers of our faid court of Chancery, should not be burthened otherwise than as in times past hath been accustomed, do strictly command and injoin you, and each of you, that you do not in any manner molest or trouble A. B. Gent. one of the sworn clerks ilai

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clerks of C. D. Esq. one of the Six-clerks of our faid court of Chancery, who daily doth with the greatest vigilance and diligence serve, and intends to serve us and our subjects in the faid court; and that you do not permit or fuffer him to be molefted or troubled by any other persons; and that you, or any of you, do not by any means compel him to appear or answer before any secular Justices. ludges, Officers, or Ministers whatsoever, except (1) our Chancellor of Great Britain, or the Keeper of our Great Seal of Great Britain for the time being, upon any pleas, plaints, trespasses or demands. which do not concern our person, (pleas concerning freehold, felonies and appeals, only excepted) or by reason of any summons's, or panels; and that you, or any of you, do not compel him to appear upon any affizes, juries or recognizances, to be taken before Justices, Judges, or other Officers or Ministers whatsoever; and that you, or any of you, do not by any means place or chuse him into the offices of collector of the subsidies of fifteenths, tenths, church-warden, constable, tithingman, surveyor of the ways, or overseer of the poor, nor compel him, or by any means cause him to be compelled, to watch and ward, or to execute any other office, fervice or attendance which is to be performed or exercised elsewhere than in our faid court of Chancery; and if you. or any of you, have distrained the said A. B. upon that occasion, that you and each of you do, without delay, release such distress to him, so that he the faid A.B. may not be molested or troubled by you or any of you, contrary to the tenor of the liberties and privileges aforesaid, or in any of the

premiffes,

⁽¹⁾ Should not the Lords Commissioners for the custody of the Great Sea of Great Britain, be also excepted?

De Procestes and Proceedings

premisses, and that you do not fusser him to be molested or troubled therein, so far as it is in your power to prevent. Witness ourself at Westminster the—day of — in the — year of our reign.

By the Lord High Chancellor of Great Britain.

Fortescue D. (meaning the Six clerk.)

This writ is folded up and fealed like an injunction, and is thus indorfed on the back thereof:

Writ of privilege of A. B. Gent. one, &c.

By the Lord High Chancellor of Great Britain.

(To which his Lordship adds,)

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No fee is taken for sealing and signing this writ.

Commission of rebellion.

THIS writ is usually directed to such commissioners as the plaintiff names, which are commonly four or more, as the plaintiff or his solicitor shall chuse. If the return be of any long distance, &c. and the party offers good bail, the commissioners ought to take it, and not to keep him lingering in prison, in their houses. 2 Chan. Rep. 262.

If the commissioners refuse to return the writ the court, on motion or petition, will order them to return it; which order, if upon service they obey not, process of contempt may issue against them. And where private persons are made commissioners, if they take the party, and suffer an escape, the court, on affidavit and motion, and a day ur

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day given to shew cause to the contrary, will order them to be committed till they bring him in, or pay the debt, &c. Toth. 38, 39. And therefore it is ntceffary and usual for the commissioners to take a bond from the person so in contempt, with one or more fureties for his appearance, unless it be for payment of money decreed, or not performing a decree; in which case the commissioners ought not to take bail, nor fuffer the defendant to enter his appearance with the Register; but the commissioners ought to bring the defendant into court, and get counsel to move the court that the defendant may be turned over to the Fleet prison. where he is to remain till he has paid the money, or performed the decree, and cleared his contempt; and then the court will order him to be discharged: And if any person shall rescue him, the court will order the rescuer to stand committed.

A wife was taken upon this process, and carried bound to prison, and kept very close, the huband not being taken; the court ordered that he should be discharged, and costs paid her, as well in respect to the bringing her in without her huband, as her being so hardly dealt with.

The commissioners have power, by their commission, to call to their assistance any person or peace officer, to assist them in taking the rebel; and they may, with the assistance of a constable, break open his house to take him, by reason of his contempt to the King and the law; which they cannot do upon an attachment, or attachment with proclamation.

After a man is taken upon this commission, the justices of the peace cannot bail him, altho' it is an offence against the publick peace; but the commissioners may, which is usually done in their own names, with condition for the defendant's appearance.

Vol. I. Z Upon

Upon his being admitted to bail, he ought to

pay costs of his contempt.

If the defendant is in contempt to a Serjeant at arms, for not answering, and then puts in an insufficient answer, and the plaintiff's clerk in court accepts the costs, it purges the contempt, and the plaintiff must begin again with an attachment, the first process; but if the costs be not accepted, the plaintiff may go on with his process for contempt where he left off, for a further answer. 2 P. Will. Rep. 481.

Serjeant at arms.

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FTER any order for a Serjeant at arms shall be granted, the Register shall draw up the same, and at the request of the Serjeant at arms deliver it to the Serjeant or his deputy; and the faid order is not to be discharged, nor the contempt thereupon, without the Serjeant's fees be paid, and a certificate under his hand testifying the Vide Ord. Can. 4 Nov. 26 Car. 2. 1674. And this order is revived by order bearing date July 13. 1 Jac. 2. 1685. This farther order is also revived by an order of the 12th of June 6 W. 3. 1694. whereby it is likewise ordered, that the counsel moving for a Serjeant at arms shall immediately, in court, deliver to the Register the commission of rebellion, and, if required, name the clerk in court.

By order, bearing date May 13. 7 Geo. 1. 1721. upon the petition of the Serjeant at arms, that he is intitled to take all persons into custody who stand in contempt to a commission of rebellions his Lordship declared, that no sequestration can regularly issue to sequester the estate of any person who cannot be found; but upon the return nonestinventus of the Serjeant at arms; and therefore ordered that from henceforth, where any person

was in contempt, either for want of an appearance or answer, or for not yielding obedience to any order or decree of this court, (unless for contemptuous language, or the beating or abusing any person in the service of the process of this court. or other contempts of the like nature) the Sericant at arms should apprehend and bring the contemner to the bar of this court to answer such contempt; but if the contemner could not be found, then to return non est inventus, to the end a fequestration might regularly iffue, according to the ancient usage and practice of this court; and that process should for the future iffue accordingly; and that it should be made a part of all orders for giving time to answer, or for doing any other act, upon the party's entring his appearance with the Register, that the party, when he enters such appearance, should likewise consent that the Serjeant at arms should go against him, as upon a commission of rebellion returned non est inventus, in case of non-compliance. And the said order was ordered to be hung up in the Register's and Sixderk's office, that all persons might take notice thereof, and yield obedience to the fame. - Vide Prec. in Chan. 553, 554.

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Sequestration.

THIS commission of sequestration is generally directed to sour or more commissioners, empowering them to seize the defendant's real and personal estate into their hands, and to receive and sequester the rents and profits of his real estate, until the defendant shall have answered the plainiss's bill, or performed some other matter which has been ordered by the court, for not doing whereof he is in contempt, as aforesaid.

Plaintiff's counsel may move and obtain an orer for tenants to attorn and pay their rent to se-Z 2 questraquestrators, or for sequestrators to sell and dispose of the goods of the party, and keep the money in their hands, or bring it into court, as the court shall direct.

And these commissioners are accountable to the court, and are to act in the execution of their office, according to the directions of the court, and they are to make return from time to time, of what they have feized, as the court directs: and are to account for what come to their hands, and to bring the money into court, as the court shall direct, to be put out at interest, or otherwise, as shall be found necessary. But this money is not usually paid to the plaintiff, but is to remain in court till the defendant hath appeared or answered, and cleared his contempt; and then, whatever hath been seized by virtue of the sequestration, shall be accounted for and paid him: However, the court hath the whole under their power, and may act therein agreeable to the equity of thecale And the plaintiff's counsel may move and obtain an order for tenants to attorn, and pay their ren to sequestrators, to sell and dispose of the goods of the party, and keep the money in their hands, of bring it into court, as the court shall fee fit.

It was moved, that the irregularity of a seque stration might be referred to the deputy, which was taken out against the defendant for not appearing, by reason of its being taken out some than by the course of the court it could; and ye the sequestrators had taken the goods off the pre misses, and threatened to sell them. The Chie Baron said, That, as to the carrying the goods of the premisses, it was clear the sequestrators could do that, because a sequestration upon mesne process answers to a distringus at law. But the could agreed, that the sequestrators could not sell the

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goods. M. 1729. in Scat'. Barnard. Rep. in B. R.

Courts of equity could not authorize sequestrators to sell goods, even upon a decree, till Lord

Stamford's act. Ibid.

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Where sequestrators seize the real estate of the party, any person who claims title to the estate so fequestred, either by mortgage or judgment, leafe, or otherwise, or who hath a title paramount to the sequestration, shall not be obliged to bring a bill to contest fuch title; but may move the court, s of course, to be examined pro interesse suo: And in this case the plaintiff is to exhibit interrogatones in order to examine him, and for a discovery of his title to the eftate; and he may be examined thereon accordingly; and the Master must fate the fame to the court, and the parties may enter into proof touching the title to the estate in question; and when the Master hath stated the whole matter, the court gives judgment upon the report: And if it appears that the party who is examined pro interesse suo, hath a plain title to the flate, and is affected with the sequestration, then it is to be discharged as against him, with or without costs, as the court sees fit upon the circumfances of the case: And there may happen other incumstances and proceedings upon a sequestraion, which cannot fall within the general rule here aid down, and which must be determined accordng to the nature of the case, and as it appears to

Where a fuit is for lands, a sequestration will a granted of all the party's lands, tenements and treditaments, with an injunction for the profits of the lands, tenements, &c. to be delivered to be plaintiff, by the Sheriff or the commissioners of that purpose named in the commission of sequestration: And an injunction upon a sequestration

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tion is the utmost process that this court can iffue

for contempt of non-appearance, &c.

A sequestration may be granted either before or after hearing: And it may be granted against an infant for non-appearance; and also against a Peer, 2 Chan. Ca. 163.

Sequestrations were first introduced in the Lord Bacon's time, and then but sparingly used in process, and after a decree to sequester the thing in

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demand only.

In Chancery, not only the body of the defendant, but also his lands and goods, are liable to a sequestration: But no sequestration lies till the time for the return of the attachment is out, on which the body was taken; for till then he may clear the contempt, or if for disobedience to a decree, he may perform it. But it is reasonable sequestration should lie in case one taken into custody by process of Chancery, continues in prison without paying his debts. Vide 2 P. Will. Rep. 240, 241.

A sequestration is usually had of both lands and goods, where the thing decreed is a personal duty.

1 Chan. Ca. 92.

And it hath been sometimes granted for money of the parties in other men's hands. Toth. 173.

The court of Exchequer granted a sequestration after a decree for a personal duty. 2 Freem

Rep. 99.

CIDIS

A lequestration was granted against the Countesses of Shaftsbury and Gainsborough for the contempt in contriving and effecting the marriag of the Earl of Shaftsbury, an infant, with the Countess of Gainsborough's daughter, without consent of his guardian, named by his father's will and without applying to the court. 2 P. Will. 110

This process is like an outlawry at commo

to ferve process upon, is proceeded against to a fequestration, and does not then appear, you may proceed against the rest. 1 Chan. Ca. 139.

Where lands of the husband, out of which an annuity to the wife iffued, were fequeftred; the husband dying, the sequestration was discharged as

to the annuity. I Chan. Rep. 247.

If a party does not obey a decree, all process of contempt may iffue against him; and if not taken, the court will grant a sequestration. So if he be taken and lie in prison, obstinately refusing to perform the decree, the court will grant a fequestration. 2 Chan. Rep. 151. Moseley 301. pl. 163.

A voluntary and fraudulent conveyance, to avoid an approaching fequestration for a personal duty, is no bar to the sequestration. 2 Chan.

Ca. 46.

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Upon motion for a sequestration of the defendant's estate in Ireland for a contempt of this court, the Master of the Rolls was of opinion, that such sequestration could not be granted, or at least that he would be well advised before he could grant it; for that the process of this court could not affect any lands in Ireland, the practice in such case being to make affidavit that the person standing in contempt is here in England, and being afterwards taken up, the court will oblige him to get bail to abide and perform their decree. Sir J. Fryar and Vernon. Hil. 11 Geo. 1 .- 2 Will. Rep. 261.

Upon an affidavit that the defendant was gone to Holland to avoid the plaintiff's demand; and he having before been arrested upon an attachment, and a cepi corpus returned by the Sheriff, the court, upon motion, granted a Serjeant at arms against him; and upon the return thereof, a sequestration.

1 Vern. 344, a not a vitement is 10 . 10 810 de 100 81512

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Of Process and Proceedings

A sequestration that issues as a mesne process of the court, will be discontinued, and determined by the death of the party; but where a sequestration issues in pursuance of a decree, and to compel the execution of it there, tho the same be for a personal duty, it shall not be determined by the death of the party. Vaugh. 58. Sed vide Vern. 118, 166.

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A sequestration binds from the very time of awarding the commission, and not only from the time of executing it, and its being laid on by the commissioners; for if that should be admitted, then the inferior officer would have ligandi & non ligandi

patestatem. 1 Vern. 58.

The party who takes out a sequestration, shall not be answerable for the acts of the sequestrators, for they are the officers of the court. 1 Vern. 160, 161.

If a necessary defendant is prosecuted regularly to sequestration, plaintiss may go on against the other desendants; but serving a subpoena at a place where he had only once lodged, and that two years before the service, is not good. Prec. in Chan. 99.

Sequestrators on a mesne process are accountable for all the profits, and can retain only so far as to

fatisfy for the contempts. 1 Vern. 248.

Care ought to be taken that the commissioners in sequestrations be such as are able to answer for what shall come to their hands, in case they should be called to an account.

The sequestrators, after they have sequestered part of the estate, may not sell it without leave of the court; and they are to behave themselves in all other acts relating to their office, as the court shall direct.

or Member of the House of Commons; but if there be an order for a sequestration niss against a Peer, for want of an answer, and the Peer puts in

an insufficient one, yet the order for a sequestration hall not be made absolute, but a new order for a fequeltration nife shall be made. Mich. 1726. Lord Clifford's cafe, 2 Will. Rep. 385.

When application is made for a fequestration to the foreign plantations, it ought to be to the King

in council. 2 Will. Rep. 262.

A particular fequestration will not be granted to

Ireland, but a general one. 1 Vern. 75.

A sequestration before marriage, and the plaintiff marries and dies, shall not take place of the wife's dower. Vern. 118. C. 106.

This writ is not to be granted without oath. Skin.

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Sequestrations run upon copyholds. Vide I Barnard. Rep in Chan. 431.

Having now confidered the feveral processes of contempt (a) distinctly, I shall conclude this chap- (a) By the ter with some observations upon contempts in ge- King's de-

mife all procels of contempt not

encuted is determined, so that you must begin again at the first attachment; but where any process is executed, and a cepi corpus returned, there the process stands good. Vern. 300.

Where oath is made of a misdemeanor in beating or abusing a person serving any process of this court, the person offending is to stand committed on motion, and must answer the contempt in vinculis; and it is conceived, that in this case the oath of the party is fufficient to ground the attachment upon against the offender, without any notice to be given to him; for who is to prove the abuse, but the party abused? he may attend the court, and thew every wound and hurt he has received: And this abuse is often done in so private a manner, that there is no way left to prove it, but the oath of the party abused; and if this should be discouraged, no proces

process of the courts would ever be served; and the court are bound to justify their own honour and authority in this particular point. But a Peer may abuse, &c. as often as he pleases, for his person being sacred, he is out of the reach of the court, and they can't come at him, as in the case of a common. This was so in the case of Denne and Lord Delaware, where the party was abused in the service of the process of the court, and went without remedy.

So where affidavit is made by a person of scandalous or contemptuous words against the court or the process thereof, the party offending shall be committed on motion, and must answer his contempt in vinculis. And in this last case, a single affidavit is always thought sufficient to ground an attachment nist causa on, and to give the defendant

a day to fhew cause.

If any suitor of the court is arrested in the face of the court, or as he is going or coming to attend his causes, (for so far the court does and will protect a man) upon complaint made thereof, sitting the court, they will send out the tipstaves to bring in the bailiss and prisoner instantly, and will order them forthwith to discharge him, and lay them by the heels; and the plaintiss in the action, on complaint and oath made thereof, will certainly stand committed, and he shall lie by it till he petitions, submits, begs pardon, and pays costs to the other party.

Where a clerk in court or folicitor is committed for male practice or misbehaviour of his known duty, after he has lain in custody some time, the court will discharge him upon a petition signed by him, wherein he must beg pardon, be forry for his

contempt, and pay the costs.

All process made upon any contempt, is to be made out into the proper county where the party is usually resident, unless he shall be at that time occasionally

fionally in or about London; in which case it may be directed into the county where he shall then be, that it may be served upon him there: And he who prosecuteth for contempt, is to do his best endeavour that the precedent process be duly executed: And if a party arrested upon a proclamation, or commission of rebellion, or by the Serjeant at arms, shall make it appear unto the court by proof, that the prosecutor of those processes hath not done his best endeavour to have the precedent process duly executed, then the party so offending shall pay the other party costs. Ord. Chan. Nov. 17.2 7 Car. 1631.

And if any person shall be taken upon process otherwise, or any way irregularly issued, the party so taken, first appearing unto, and satisfying the process which had irregularly issued against him, shall be discharged of his contempt, and have his sull costs to be taxed of course, either by the Master, or by the Six-clerk, not towards the cause, for such irregular prosecution, from the time the error first

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All attachments on process shall be discharged upon the defendant's payment, or tender to the plaintiff's clerk, and refusal, of the ordinary costs of the court; and filing his plea, answer or demurrer, as the case regularly requires, without any motion in court, or petition on that behalf.

And if after such conformity, and payment of costs, (or tender and refusal, as aforesaid) any farther prosecution shall be had of the said contempt, the party prosecuted shall be discharged with costs.

And where a contempt is profecuted against any man, he shall not be put to move the court, as was formerly used, either for interrogatories to be exhibited, or for reference of his examinations, or for his discharge when examined; but when he shall be brought in by process, or shall appear gratis to

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be examined upon a contempt, he shall only give notice of such his appearance to the attorney or

clerk, on the other fide.

And if within eight days after such appearance, and notice given, interrogatories shall not be exhibited whereon to examine the party; or if no reference be procured of his examination, nor commission taken out on the other side, nor witnesses examined in court, to prove the contempt within one month, then the party thus prosecuted ought to get an order to be discharged, and for a Master to tax the costs.

If after appearance, and interrogatories exhibited as aforesaid, the party appearing shall depart before he is examined, without leave of the court; upon motion, and certificate of the same, &c. he shall stand committed without farther day to be given him; and is not to be discharged from his contempt, until he has been examined, and is cleared thereof.

And if he shall, upon his examinations, or by proofs, be found in contempt, and thereupon committed, he shall clear such his contempts, and pay the prosecutor his costs before he be discharged of his imprisonment.

And tho' he be cleared of his faid contempt, yet he shall have no costs, in respect of his disobedience in not submitting to be examined without the profecutor's trouble and charge in moving the court.

All persons guilty of any breach of the orders of the court, may be committed for the contempt, which is to be examined into upon oath on interrogatories; and if the contempt be found, the parties must clear it, and pay costs to the prosecutor,

[For more touching sequestrations, vide 2 Vol. Abr. Eq. p.]

The

The Returns of the Terms.

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Hilary Term.

This Term begins the 23d of January, and ends the 12th of February following; and bath four Returns.

For the label. In eight days after St. Hilary.	In fifteen days after St.	On the morrow of the Purification.	In eight days after the	Purification.
For the writ. In eight days after St. Hilary next enfuing. In eight days next enfuing after St. Hilary.	2. In fifteen days after St. Hilary next enluing. In fifteen days next enfuing after St. Hilary.	3. On the morrow of the Purification of the Bleffed Virgin Mary On the morrow of the	In eight days after the Purification of the Bleffed Virgin Mary-	In eight days next enfuing after the Purification of the Bleffed Purification.

The Beturns.

Easter Term.

This Term begins the Wednesday fortnight, or seventeen days after Easter-day, and ends the Monday next after Ascension-day; and bath sive Returns.

In fifteen days after Eafter next enfuing.

In fifteen days next enfuing after Eafter.

From the day of Easter in three weeks next enfuing.

From the day of Easter in three weeks next enfuing.

From the day of Easter next enfuing in one month.

From the day of Easter in one month next enfuing.

From the day of Easter next enfuing in five weeks.

S. On the morrow of the Asenson of our Lord next enfuing.

From the day of Easter in five weeks next enfuing.

In three weeks after Eafter. In fifteen days after Eafter.

In one month after Easter.

On the morrow of the In five weeks after Eafter. Ascension.

Trinity Term.

This Term begins the Friday next after Frinity Sunday, and ends the Wednesday fortnight after; and bath four Returns. [See 32 H. 8. c. 21.]

On the morrow of the Holy Trinity next enfuing.

In eight days after the Holy Trinity next enfuing. In eight days next enfuing after the Holy Trinity. In fifteen days after the Holy Trinity next enfuing.

In fifteen days next enfuing after the Holy Trinity.
From the day of the Holy Trinity next enfuing in three weeks.
From the day of the Holy Trinity in three weeks next enfuing.

On the morrow of the set Trimity.

In eight days after Trimity. In three weeks after Trinity. In fifteen days after Trimity.

Michael-

Michaelmas Term.

This Term by the Statute 16 Car. I. c. 6. begun the 23d of October, and ended the 28th of November; and bad fix Returns: But by Statute 24 Geo. II. c. 48. it begins 6 November, and endeth 28th, and is abridged to four Returns only.

From the day of St. Michael next enfuing in three weeks.

From the day of St. Michael in three weeks next enfuing.

From the day of St. Michael next enfuing in one month.

From the day of St. Michael in one month next enfuing.

8. On the morrow of All-Souls next enfuing.

4. On the morrow of St. Martin next enfuing.

In three weeks after St. A In one month after St. On the morrow of All-On the morrow of St. Michael.

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CHAP. VI.

Of appearing, preferring costs, and answering; and also of disclaimers.

TF the defendant lives ten miles from London, he has four days to appear in after the return of the subpana, unless it was served four days before the return, and then he ought to appear at the returnday, or the next after at farthest : But if he lives beyond that distance, then he has eight days after the return; yet if ferved eight days before the return, he ought to appear on the return-day, or next day after: But if the defendant, living within ten miles of London, be ferved fix or feven days, or more, before the return, then he shall appear atithe return-day, or the next day after: And so if he be served one, two or three days before the return: And if he lives beyond that distance, then if he be served either the morning of the return, or one day before, in fuch case he hath eight days to appear; but where he is ferved eight days or more before the return, he has only one day at most after it to appear in. And this, I think, is the strict practice of the court. But yet if a defendant lives twenty miles from London, he is intitled to answer by commission, and then he has usually time till the first neturn of the enfuing Term, or longer, on cause hewn by motion or petition.

After a defendant has been served with a subpana, and given directions to a clerk in court to appear for him, if such clerk in court finds that the bill is not entered, he usually puts up a note in the Six-

clerks Office, as follows:

Michaelmas Term.

This Term by the Statute 16 Car. I. c. 6. begun the 23d of October, and ended the 28th of November; and bad fix Returns: But by Statute 24 Geo. II. c. 48. it begins 6 November, and endeth 28th, and is abridged to four Returns only.

el next enfu	el in one r
From the day of St. Michael next enfuing in three weeks. From the day of St. Michael in three weeks next enfuing.	From the day of St. Micha

In three weeks after St. In one month after St. On the morrow of All-On the morrow of St.

4. On the morrow of St. Martin next enfuing.

5. On the morrow of All-Souls next enfuing.

CHAP. VI.

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clerks Office, as follows:

VOL. I.

P.

A'a

Enter

Enter Bill.

A. against B.

D.

But if he has preferred costs, then he writes

Enter Bill, costs preferred.

A. against B.

Bush in the term of the control of t

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Which note the defendant's Six-clerk enters in the costs book.

And this note is also usually affixed to the middle pillar in the office. When a subpana has been ferved, and no bill is filed, the next day after the Subpana is returnable, he writes a note, Enter coffs, A. against B. and leaves it with the Six-clerk's porter, or in the hall below the office where the offi book is kept, and the Six-clerk enters it in the book; which being done, and the line struck, the clerk in court makes out a bill of costs, and carries it before any one of the Masters in Chancery; who will ta it, and fet his name to the bill of costs: Andifi be a town cause, he usually allows one pound three hillings and four pence, or one pound fix hilling and eight pence, and if a country cause, one pound thirteen shillings and four pence. And that bill of cofts is carried to the Register, who enters it, for which one shilling and four pence is paid, and the he takes out a subpana for the costs: Howeve some have ventured to enter the costs with the Re gifter, without taxing, and others have taken out Subpana for costs, without taxing the costs, or es tering; but these methods, if contested, may per haps admit of an irregularity.

Note

Note; This subpana for costs (which is always payable to the defendant or bearer) must be served on the plaintiff personally, and the costs demanded of him; and if upon such fervice he refuse to pay the faid costs, the defendant may (upon affidavit that the subpana for costs was so served, and the money demanded) have an attachment directed to the Sheriff of the county where he lives, to attach him for the cofts: And if the Sheriff upon the attachment make return that the plaintiff cannot be found, then a proclamation may be iffued against him; and that proclamation being likewife returned as aforefaid, then a commission of rebellion may be fued forth against him, &c. And upon the return of a non est inventus on a commission of rebellion, then you have an order for a Serjeant at arms, and on his like return an order for a sequestration against the defendant's personal estate, and the rents and profits of his real estate, until he shall pay those costs, clear his contempt, and the court take other order to the contrary: But observe in all these processes where a non est inventus is returned, there must be fifteen days between the teste and return; unless defendant can be arrested on fuch process. The usual method of a defendant's appearing, is (either by himfelf, or attorney) to employ or retain a clerk in court, or waiting clerk to appear for him. And accourse is to be had to the general bill-book before mentioned, to fee who filed the bill; which being fled, the defendant's clerk then goes to the plaintiff's clerk in court to appear thereto, who thereupon enters his appearance; after which he goes into the fludy of the plaintiff's Six-clerk who filed the bill, and there takes it from the file, at the same time leaving a note with the Six-clerk, and entering it in his book there. But if another clerk in fourt has appeared for any other defendant before, Aa2 then

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then the plaintiff's clerk in court is applied to, who thereupon takes down the appearance, and then the clerk in court, who appeared before for another defendant, is applied to, of whom the bill is received

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As to appearances, they are either voluntary, or compulsory: Voluntary, when the defendant comes in upon the return of the subpana, and appears as aforesaid; Compulsory, where he is taken and brought in upon an attachment, proclamation, commission of rebellion, or by the Serjeant at arms; in which cases he must enter his appearance with the Register, though sometimes, upon being arrested upon an attachment or proclamation, the Sheriss will take a bail-bond of the defendant in forty pounds penalty, conditioned to perform what the defendant is arrested for by the return of the writ; and if the defendant does not answer by the return of the writ, the bail-bond may be put in suit and recovered at law.

But if the defendant has a mind to enter his appearance with the Register, he is carried to the Regifter's office, and one of the entering Registers writes a certificate, on a double fix-penny stamped sheet, of the defendant's entering his appearance with the Register on the writ he is arrested upon, and confenting that a Serjeant at arms shall issue against him for his contempt in case he is not discharged therefrom: Or if the defendant be arrested in the country at some distance where he cannot conveniently come to London, he may obtain an order that he may enter his appearance with the Register by his clerk in court on such proces; and his clerk in court, having sufficient authority for that purpose, carries the order to the Register's office, and the entering Register writes a certificate on the faid order of the defendant's having entered his appearance with the Register by his clerk in court in manner as aforesaid. And upon obtaining such certificate the defendant is discharged from
his arrest: But then, in case such process regularly
issued against him, he must obtain an order for time
to put in his answer, and put in his answer accordingly, and pay the costs of his being arrested on
such process, otherwise the plaintiff may obtain an
order for the Se jeant at arms to apprehend him for
his said contempt.

The husband must enter an appearance for his wife, by his clerk in court, or an attachment will

issue against both. Carey 76, 3.

If the wife appears in consequence of an arrest for want of appearance, and a bail-bond has been given by her, without her husband, the act shewing an acquiescence and defence of the cause, the court will neither discharge the bail-bond nor appearance. Ves. Rep. pl. 173.

One defendant not appearing, the whole line of process against him is equal to the proceeding to outlawry at common-law, and there may be a decree against the other defendants who have appear-

ed. Vefey, Vol. 1. Cafe 175.

No appearance will give a jurisdiction to a limit-

ed court. Vef. Rep. 471.

Appearance of a defendant obliges him to answer as many bills of the same plaintiff as he shall file. Gilb. Chan. 27.

Non-appearance, where the label and body of the subpana do not agree, is no contempt.

Ibid. 40.

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When defendant applied to discharge an order made on the act of the 5 Geo. 2. c. 25. in order to hew that he did not abscond or retire into Ireland for the sake of avoiding the process of the court, the court thought proper that he should make an affidavit in answer to the substance of the charge by the bill. Barnard. 401. See ante 38, 48. 3 Tr. 4k. Rep. 690. pl. 60.

Aa 3

An

An order was obtained (by contrivance) upon the Statute of 5 Geo. 2. The defendant appeared to the bill, and on application to the court they fet afide the order.—Note; The appearance to the bill must be set aside likewise, for though an appearance usually salves error in the process, [Vef. Rep. 386.] yet in this case the order being obtained by male practice and imposition on the court, and the appearance having so bad a foundation cannot establish and make it good. Barnard. 403.

Tis not sufficient to be sworn by the affidavit, that the party making it was informed and believes, that the defendants withdrew themselves in order to avoid being served with the process of this court. But it must be set forth by whom the par-

ties received fuch information. Ibid.

Where a folicitor shall be committed for obtaining an order in an undue manner, upon the Stat. 5.

Geo. 2. See ibid.

The defendant having appeared, and taken an office-copy of the bill, is to lay the same, or a copy thereof, before counsel, with instructions for the answer, who will advise him either to answer, plead or demur thereto, as the case requires: Or the desendant's attorney may draw the answer, and then lay it before counsel to peruse and sign.

If a defendant does not answer in time, an at-

tachment iffues of courfe.

Where fubpana is returnable as near the end of the Term, that there cannot be a day given defendant to answer, in such case defendant must at his peril answer the same day se'n-night following his appearance, though it be out of Term; for Cancellaria est officina semper aperta.

If the defendant's appearance be time enough within the Term, rule may be given to answer within eight days; but if no rule he given, he is at liberty to answer at any time within the Term.

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Where a defendant finds himself stinted in time, so that he cannot put in his answer according to the ordinary rules of this court, as where he cannot answer without fight of writings which are in the country, &c. or if the bill be for an account of goods that are in the country, and he in Landon, so that he cannot set forth the particulars without sight; in these and many other singular cases, the court, on motion or petition, will grant such time to answer as is reasonable; but this ought only to be where the defendant incurs any displeasure of the court, but appears regularly at the return of the subpana.

Yet this is usually granted upon the defendant's submitting to enter his appearance with the Register; as upon an attachment, and consenting that a Serjeant at arms shall issue against him; and if he answers not by the time allowed him, then the plaintist takes a certificate from the Register of the defendant's having entered such appearance. And it is a motion of course to obtain an order for a Serjeant at arms against the defendant; and then he must answer and clear his contempt before he be dis-

charged.

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rm. Vhere If the defendant live above twenty miles from London, he has a dedimus of course to put in his answer the Term following, which he is intitled to

pray upon his appearing.

It must be to plead, answer or demur, as the case tequires, and it is obtained either on motion or petition: But the court never grants a commission to demur alone, for the ancient rule was to plead, answer or demur, because a demurrer is ever looked upon as dilatory, and the court will never indulge it by a commission in delay of the plaintiff, because the defendant may put in a demurrer alone, without any oath, signed by counsel, and which therefore he ought to put in in due time, and is not to

Aa4

be excused from it by a commission to the needless charge and delay of the plaintiff; But by virtue hereof he may put in a plea, answer and demurrer, or only a plea and answer, or a plea or answer only; but shall never demur to the whole bill alone, on having obtained fuch order as aforefaid; And if the defendant does put in only a demurrer after having obtained fuch order, fuch demurrer will on motion be discharged with costs, though the demurrer otherwise might be a good demurrer, And this special commission is returned as other commissions are; and fix days notice of executing thereof is to be given to fuch one of the plaintiff's commissioners, as notice is directed to be given to. of the day of executing the commission. But in strictness, if notice be given on Monday to execute on Saturday, it may be good.

After a contempt duly profecuted to a proclamation returned, no dedimus is to iffue without motion and good cause to satisfy the court touching

the delay.

A dedimus is sometimes made returnable without delay; but regularly the dedimus (if the subpana was returnable the first day of the Term) ought to be returnable the last day of the Term. Though the modern practice is to indulge the defendant with a dedimus returnable the first return of the next And so if the subpoena was returnenfuing Term. able the last day of the Term, the dedimus should be returnable the first day of the following Term : But this is no fixt rule, but is discretionary; for in the two short Terms, and where the defendant lives a great distance from town, he must have a commission with a longer return than where the defendant lives And these proceedings are generally nearer town. adapted to the conveniency of both parties; and what time the defendant shall have, is usually settled amongst the clerks themselves. But

By the rules of the court a dedimus is returnable the first return of the next Term, but by the practice it is not returned till the second return of Hilary and Trinity Terms, because the vacations between Michaelmas and Hilary are so short. Mosely's reports. 176.

Two commissioners, one on each side, are sufficient to take an answer; yet generally there are two on each side, or two for the one, and one only for the other: And each side names his own com-

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And no fecond commission is to be had without special order of the court, on good cause shewn,

or by consent.

Before a commission to take an answer is issued; the defendant's clerk in court usually calls upon the plaintiff's clerk in court for commissioners names; to see the defendant's answer taken, or leaves a note in writing with him for that purpose, and, upon receiving names, he proceeds to make out the commission: But if the plaintiff's clerk in court resules to give such names, the defendant may, on motion or petition, obtain an order to compel him to give names in two days, or, in default thereof, that the defendant may be at liberty to have a commission directed to his own commissioners. The forms of which petition and commission are as follow:

Between A. B. plaintiff, C. D. defendant,

To the right bonourable the Master of the Rolls,

The bumble petition of the defendant,

THAT the plaintiff hath exhibited his bill against your petitioner, to which he hath appeared,

appeared, and your petitioner's clerk in court hath often ealled on the defendant's clerk in court for commissioners names to see your petitioner's answer taken, which he refuses to give to your petitioner's clerk in court.

That inafmuch as your petitioner lives in the county of E. about — miles diftant from the court, and is not in contempt, nor has had any

order for time to answer the faid bill ;

Honour, that he may be at liberty to take out a commission for taking his answer to the faid-plaintiff's bill, returnable.——And that the plaintiff's clerk may in two days after notice hereof give to your petitioner's elerk in court commissioners names for taking your petitioner's said answer; or, in default thereof, that your petitioner may take out such commission directed to his own commissioner; and that all process of contempt against your petitioner for want of his answer may be stayed in the mean time.

And your petitioner shall ever pray, &c.

the commission to take an answer and

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth, To E. F. G. H. J. K. and L. M. Gents. greeting. Whereas A. B. Gent. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery against G. D, Gent. defendant: And whereas we have by our writ lately commanded the said defendant to appear before us in our said Chancery at a certain day now past to answer the said bill: Know

. Appeared.

ye, that we have given unto you, any three or two of you, full power and authority to take the answer of the said defendant to the said bill; and therefore we command you, any three or two of you, that at such certain day and place, as you shall think fit, you go to the said defendant, if he cannot conveniently come to you, and take his answer to the said bill on his corporal outh, upon the Haly Evangelists, to be administred by you, any three or two of you, the said answer being distinctly and plainly wrote upon parchment: And when you shall have so taken it, you are to send the same closed up under the seals of you, any three or two of you, unto us in our said Chancery

Wheresoever it shall then be, together with this writ. Witness ourself at Westminster the day of in the year of our reign.

Here put the Master of the Rolls and Six-clerk's surnames.

Indorse it; By the Court.

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Note; If the defendant is a Nobleman, the words above in different characters are to be left out, and the words upon bis Honour inserted in their stead.

The answer being ingross'd on parchment with two shillings stamps; if taken here in town, must be sworn before a Master in Chancery; or if the defendant lives above twenty miles from London, he may either come up to town and put in his answer here, or it may be taken by commissioners, a commission as aforesaid being first duly issued for that purpose; notice of executing which commission must be given in writing, in manner following, viz.

W E whose names are hereunto subscribed having received a commission issuing out of the high court of Chancery, to us and others directed,

Of Appearing and Answering, &c.

rected, to take the answer of C. D. defendant, to the bill of complaint of A. B. Gent. complainant; we do hereby give you notice, that we intend to execute the said commission on—the—day of, &c. at the house of, &c. at which time and place you, with your commissioners, may be present if you please. Given under our hands this—day of, &c.

To Mr. C. D.

E. F. G. H. 2

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The commissioners and defendant being met together pursuant to such notice, one of the commissioners reads over the answer; though for the
most part it is not read over to the defendant at the
time when the commissioners meet together, but
before by the defendant's solicitor; but one of the
commissioner's says to the defendant;—You have
heard the answer read, and do exhibit it as your
answer to the bill of complaint of, &c. To which
he answers Yes: Then one of the commissioners
administers the oath to the defendant, (laying his
right hand on the Bible or Testament) which is as
follows:

YOU shall swear, that what is contained in this your answer, as far as concerns your own act and deed, is true of your own knowledge; and that what relates to the act and deed of any other person or persons, you believe to be true.

So belp you God.

And the same oath is administred when an answer is sworn in town.

Observe that now a defendant here in town, as well as a defendant in the country, generally signs his answer.

By

By an order of the House of Lords in 1640, the Lords of the Parliament, and Widows and Dowagers of such temporal Lords, shall answer upon protestation of Honour only.

The answer of a * Peer or Peeress is taken upon

their Honour.

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The answer of a Corporation is taken under their common seal.

The answer of a Quaker is taken upon his folemn

affirmation and declaration.

Quaker to put in his answer without affirmation, the bill appearing frivolous. 1 Will. Rep. 781.

The answer being taken, is to be annexed to the commission; and then the caption is to be made at

the foot of the answer, thus:

THIS answer was taken, and the above named C.D. defendant was duly sworn to the truth thereof upon the Holy Evangelists, at the house of E.F. situate in the parish of G. in the county of H. on the day of in the year of the reign of his Majesty King George the third, and in the year of our Lord 1770, by virtue of the commission hereunto annexed, before us

To this the commissioners sign their names.

Note; The caption is to be properly varied ac-

cording to what is taken.

And the caption being made and subscribed in this manner, the commission is indorsed about the middle, thus:

Sir Thomas Meers exhibited a bill sgainft the Lord Stourton, and it was sedered, That the Lord Stourton should be examined upon interrogatories touch up his title; and it was objected, that he being a Peer of the realm, sught to answer upon his Honour only; and it was resolved by Harcourt, Lord Keeper, that where a Peer is to answer to a bill, his answer put in upon his Honour is sufficient; but where a Peer is to answer interrogatories, to make an affidavit, or to be examined as a witness, he must be upon his oath, Sir Tho. Meers v. Lord Stourton, 2 Salk. 512, P. Will, 146, see 4 Bac, Abr, 237.

Of Appearing and Antwering, &c.

The execution of this commission appears in a certain schedule, or certain schedule, or certain schedules (if more than one skin) bereunto annexed.

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And underneath the commissioners are to fign

If there be schedules, they are all to be annexed to the commission; and then the commission is to be made up and sealed, and directed to the clerk in court: And when he receives it, it is to be indersed in manner following:

23 January 1770. Upon the oath of A.B. at the publick office before

But if the bearer or messenger be sworn at any other place, the indorsement must be properly varied.

Then the bearer it taken to the publick office, or other place, before one of the Masters, where he swears, That be received the commission from the bands of one or more of the commissioners therein named, and that it has not been opened nor altered since he so received it.

But if one of the commissioners has the carriage thereof, and delivers it sealed, as aforesaid, into the hands of a clerk in court, it is always accepted without oath, and indorfed thus:

January 23, 1770. Received by the bands of A. B. one of the commissioners.

These things being done, the answer may be opened; and the clerk in court enters it in his cause-book, annexes it to the bill, marks it at the top, with the day and year when filed, and subscribes his name at the bottom, on the left-side, and then files it with his Six-clerk, of which he informs the plaintiff's clerk in court, who goes into his Six-clerk's study

Of Appearing and Answering, &c.

fludy (it being by the defendant's Six-clerk transmitted thither) and takes it from thence, first making an entry thereof in the Six-clerk's book : But if the answer of another defendant to the same bill be filed before, he then proceeds as aforefaid, fave that in this case he does not annex the answer to the bill, but only writes at the bottom of the answer. Bill with another answer to A. i. e. the plaintiff's Sixclerk, filed fuch a Term with B. i. e. the defendant's Six-clerk.

But observe, that though no answer is strictly reputed fuch till filed, nor to be filed until the cofts of contempt for not answering are paid, yet they

may be, and are frequently filed before.

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An answer in general, must confess or avoid, or traverse or deny the material parts of the bill: It must contain nothing scandalous or impertment; it must be under counsel's hand, (unless it is taken by commission in the country, and then it may be fworn and filed without counsel's hand thereto) and upon path, except in the case of Peers, &c. And an answer to a matter charged as the defendant's own fact, must regularly be without faying, To his remembrance or belief, if laid to be done within fix years before, unless the court, upon exceptions taken, shall find special cause to dispense with it. And as to the fact of another, which he does not certainly know, he ought to fay, He bas beard and conceives, or believes it to be true; or, that be does not conceive or believe, &c. and ought not to fay only, that be bas beard.

If the defendant deny a fact charged in the bill, he is to traverse or deny it (as the case requires) directly, and not by way of negative pregnant; as if he be charged with the receipt of a fum of mohey, he must deny or traverse that he hath not received that fum, or any part thereof, or else set forth what part he hath received, and deny the rest:

And

Of Appearing and Antwering, &c.

And if a fact be laid to be done with divers circumstances, he must not traverse or deny it literally, as laid in the bill, but must answer the point of substance positively and certainly. Vide Claren. don's Orders 18 Car. 2. He is not obliged to anfwer to any matter, the confession whereof might subject him to any forfeiture or penalty at law. But bills for difovery of writings and evidences, & in pure matters of meum & tuum, ought to be anfwered. A counsellor, clerk in court, or solicitor, are not compellable to answer what they know of their clients causes, as they are such. 1 Chan. Ca. 277. Neither is a referee, where it is agreed, that what passes between them upon the reference, shall not be disclosed, or made use of on either fide. Ibid.

An answer ought not ordinarily to set forth deeds in bac verba; and though the bill prays they may be set forth, yet if the desendant in his answer says, he is ready to let the plaintist have copies of them; or if he does not say so, but sets forth only part of them, it is sufficient, and will be well enough; and the court will order that the plaintist have liberty, at his own charge, to take copies of them, without sending them to a Master; or order the defendant to produce them, on the examination of witnesses, &c. Ord. in Chance 121, &c.

The defendant may without notice, move to amend his answer in a small matter; but if it be in a material point, he must give notice, and the court sometimes grants it, especially upon an affidavit that the defendant was surprised therein. I Chan. Ca. 29.

But observe, that there are no settled rules for amending of answers; but it is discretionary in the court.

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Motion for leave to amend an answer in three particulars, wherein defendant found plaintiff mistaken; and per Cur. we often do it where issue is not joined, and it was ordered accordingly. Bunb. 186. pl. 263.

There are no certain rules about amendments of answers, for those amendments are in the discretion of the court, Woodgate and Fuller, Bar-

nard. 51.

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A man is not obliged to answer any question

which may subject him to a penalty.

An answer may be amended even after a prosecution for perjury commenced against the defendant, for what he has sworn in his answer, where it plainly appears to be a mere mistake. *Ibid*.

Where an answer not allowed to be amended, basely upon the affidavit of the defendant. Ibid.

Where the defendant has examined witnesses, the court will not give leave, that the plaintiff shall amend his bill, by adding parties. Barnard.

Leave was given to answer in French, and to be translated by a public Notary. Barnard. 223.

Where in a joint and several answer by A. and B. if A. for himself answers, and B. says he has perused the answer of A. and believes it to be true, if B. be charged with nothing of his own knowledge, such a relative answer is sufficient; but it is otherwise where the defendants answer severally.

Sufficient to give a full answer to the thing in demand. Pasch. 13 Gar. 2. Randall and Head, Hard. 188. But an executor must answer as to discovery of assets, though he denies the debt. Bid.

Saying he believes and hopes that a debt is paid, then sufficient. Vide 1 Vern. 140.

That he received no more to his remembrance, ufficient. 1 Vern. 470.

Vol. I.

Bb

In

In a second answer the defendant must answer the exceptions taken to the first. 1 Chan. Ca. 60.

One defendant shall not be prejudiced by the 44.

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million of another.

A defendant may, in some cases, be held down to his answer; but not where a person, to avoid a sequestration, owned he was satisfied a debt. Vide 1 Vern. 448. I Chan. Ca. 154.

A purchaser not bound by an improvident offer in his answer. Mich. 1698. Eq. Caf. Abr. 36. pl. 3.

Watkins and Hatchet.

May charge and discharge himself by answer, Vide 2 Vern. 194. Cases in Equity abridged, Title

Account, letter B.

Where the general traverse is omitted at the end of the answer, such answer is good, and not to be suppressed as improper, the bill being fully answered. 2 Will. Rep. 87.

Where the husband will answer to the prejudice of the wife, who is an executrin, the court (on motion) will give leave for her to answer separate-

ly. 2 Vol. Abr. Eq. p. 66. Ca. 2.

Where a defendant infifts on the benefit of the flatute of limitations, by way of answer, he shall at the hearing have the like benefit as if he had pleaded it. 2 Will. Rep. 145.

An answer being reported not scandalous not impertinent; if the plaintiff excepts to the report he must shew specially wherein it is scandalous or

im vertinent. Ibid. 181. It a swa or maismul

After the defendant has answered the bill, he

cannot refer it for fcandal. Ibid. 311.

It is a rule in equity, that the answer over-rules the plea, where the defendant answers to the same thing he insists on by his plea, for he ought not to aver it. Earl of Clanrickard v. Burck, Jan. 1717. 4 Vin. Abr. 442. pl. 1.

If a bill be brought against three for a joint demand, and one of them by answer says, he believes and hopes to prove the debt paid, and the cause is heard upon bill and answer, as to him the plaintiff can have no decree; for tho the desendant does not directly swear that the money is paid, yet his answer must be taken to be true, because the plaintiff, by not replying to him, has eluded him of the benefit of his proof: but upon payment of costs he may reply to the other desendants. Banker w. Wyld, 1 Ver. 140.

No decree can be made against a man's answer, upon the proof of one witness. Earl of Mountague

v. Bath, 3 Chan. Ca. 123.

If a man gives a general answer, and a paricular question be asked, which is answered in begeneral answer, yet he must answer particuarly.

A defendant was ordered to pay plaintiff 100%. or putting in a scandalous answer. 2 Gban. Rep.

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An answer in court of equity is evidence at law

gainst the defendant. 1 Vent. 212.

The answer of a married woman in equity, the te Lord Chancellor King declared, was equal to a passed by her at common law. Mosely 248.

If a defendant is in contempt for not answer
g, and on motion obtains time, if it be not ex
telly ordered that process of contempt shall stay,

kintiff may prosecute for not answering.

Defendant upon his oath shall be discharged of sms under 40s. 2 Chan. Ca. 209. Moseley 253.

P.

Answer may not be amended after issue joined, t it has sometimes been done. Chan. Ca. 29.

Answer of a Jew, ordered he should be sworn on the Pentateuch in presence of plaintiff's clerk.

z. 263.

The

2 Will. Rep.

371.

The answer of an Infidel, taken by commission at Calcutta in Bengal in the East-Indies, after the manner of that part of the world, was allowed good evidence by the late Lord Chancel. Hardwick after hearing the arguments of L. C. J. Lee, L. C. J. Willes, and L. C. B. Parker, at Lincoln's. inn Hall, 23d Jan. 1744. Hil. 18. G. 2. but his Lordship declared, it was permitted to be read, on account of the special circumstances of that particular case, and that he carried it no further. Omichund and Barker. 2 Eq. Caf. Abr. 397. pl. 15. Atk. Rep. 21. pl. 10. 2 Str. 104.

(a) Separate The wife's (a) answer not prejudicial to the hufanswer put in by wife band, where he denied the truft, and she confesalone, with- fed it, and one witness proved it, yet the bill was

the court for dismissed. 2 Chan. Ca. 39. that purpofe.

Executor must either admit assets to answer sel. Cas. in the particular demand, or. set forth particulars. Ayl. 546. MAIN VEC int was ordered to

On a bill to establish an agreement for separate maintenance the husband not obliged to discover act of hard ulage to his wife. 1 Ver. 204.

Though an answer generally concludes only the defendant that answers; yet where one defendant hath answered, and others refused, there are instance wherein the court hath determined that the re fhould be bound by the answer of the other.

Plaintiff was obliged to accept answer from Tripoli, which was ignorantly broke open on hip

Moseley 59.

The joint and several answer of two defendants was, on motion, suppressed for irregularity, because it was underwrit, Jurat', and not Jurati, or And jurati. And the Master of the Rolls said, he ha known such an answer adjudged irregular. Moje 238. pl. 130.

[For more of answers, vide 2 Vol. Abr. E 661 (A) thrackle to excelere at doubletted add to

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Of disclaimers.

Disclaimer is, where a defendant upon oath by his answer denies that he hath, or claims any right or title to the thing demanded by the plaintiff's bill; and disclaims, i.e. renounces all claim or pretence of title thefeto.

And in such case, if it appear the plaintiff's bill was exhibited against the defendant only for vexation, the court will dismiss it, and give costs

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But if the plaintiff had any probable cause or reason to induce him to exhibit his bill against fuch defendant, he may, if he pleases, by motion or petition; pray a decree against the defendant, and all claiming under him fince the time of exhibiting the bill; but this I think is feldom decreed

but on payment of the defendant's costs.

If one be named a defendant in a bill among other material defendants, who no ways pretends any right to the matters in question, and he thereupon disclaims, he may, after such disclaimer, upon a motion or petition to that purpole, be examined as a witness in the cause; for it shall be prefumed his name was inferred in the bill, without other cause than only to take away his testimony.

And where a defendant disclaims generally to all the matters in the bill, the plaintiff is not to reply ; if he does, and serves the defendant with a subpena to rejoin, the defendant may have costs against

him for the vexation to be taxed.

But if the disclaimer be only to part of the matter in question, but as to the other part there is an answer, in such case there may be a replication to that part that contains the answer. sdr answer.

Bb3 CHAP.

CHAP. VII.

Of exceptions to answers and reports; of further or better answers; with hearings upon bill and answer.

party in writing, alledging that some pleading or proceeding in a cause is insufficient, or not perfectly answered, in a certain point or points particularly expressed and set forth in such exceptions, and they must be signed by counsel.

See Mofeley

Lord Chancellor held, that when the court orders that the plea shall stand for an answer without saying more, it must be intended a sufficient answer, an insufficient answer being as no answer. Wherefore this being taken to be a sufficient answer, and no express liberty to except, the order that was made to refer the exceptions, and the exceptions themselves were discharged. 3 Will. Rep. 240. Sellow v. Lewen.

If there is a demurrer to part of the answer, and an insufficient answer to the residue, yet the plaintiff cannot except until the demurrer is argued; but if the desendant answers to a bill as to matter of discovery, and pleads only as to relief, the plaintiff may except to any matter of discovery before the plea argued; because it is plain that no matter of discovery is covered by the plea. 3 Will. Rep. 326, 327.

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If an answer be insufficient in one or more points, the plaintiff may except thereunto, and force the defendant to put in a better answer.

Where cause is shewn for a continuance of an injunction upon exceptions filed to the answer, and where the court puts the party upon procuring the Master's report in four days, as is always done

done in such cases, there the party is to take out and serve his warrants with all possible dispatch, and a day's notice to attend is sufficient; as, if the warrant be taken out in the morning, to attend in the evening, because the party has but four days to procure the report, and if he fail therein he loses the benefit of his order; but where the Master cannot sinish his report in four days, the Solicitors usually agree that the Master shall date his report as within the four days, and give him a little longer time to consider of it; or the Master may certify that the time is too short, and the court upon reading such certificate will allow such further time as the Master shall certify he wants.

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But if the answer be good to a common intent, the plaintiff must reply, and prove the matter of his bill to be true, if he can, and not insist upon the insufficiency of the answer; but this must be intended of things transacted publickly, whereof there may be a general cognizance; for of matters done by the defendant privately, or resting in his own knowledge only, he ought to answer par-

And these exceptions are drawn, or at least perused and signed by counsel: And the practice in siling exceptions touching the insufficiency of answers, is to deliver them by the plaintist's clerk in court, so signed on unstamped paper, to the defendant's clerk in court, or his clerk or agent, at his seat, first marking them at the top with the day of the month and year when delivered; and this is called filing exceptions.

Warrants given out by the Master must be served on the adverse party's clerk in court, by delivering a copy thereof to the clerk in person, or leaving a copy with his clerk or agent at his seat in the Six-clerk's Office, which is the known office for doing business; and it ought to be served

Bb 4 there

there while the office is open, and left with the clerk and agent as above; for the bare leaving it at the feat when nobody is there, and which is many times done, is no fervice; and the office is generally open till between eight and nine at night; for in this case the clerk has time to fend early notice to his client that night, whereas fome. times it happens warrants are not left till ten or eleven at night, and even at the house of the clerk in court, which is never, if infifted on, esteemed as good service; for the client can have no notice till next morning, when perhaps he may be gone out on other business, and consequently has not due time to prepare a defence, there being only a day intervening; and this is to the end that the adverte party may have time to prepare, which he could never do unless this rule was strictly observed.

This rule of serving warrants generally holds good in all cases; but as there is no general rule without an exception, so there is an exception to this; for where a party is put on procuring the Master's report in four days, here a day's notice

is sufficient to attend.

But no exceptions can regularly be taken to an answer after replication; for thereby the answer is admitted sufficient; yet in some cases the court will order the replication to be withdrawn, and the exceptions received.

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If the defendant answers to a bill as to matter of discovery, and pleads only as to relief, the plaintiff may except to any matter of discovery before

the plea argued. 3 P. Will. Rep. 327.

If an answer be filed in Term, the plaintiff must deliver his exceptions the same Term, or within eight days after? But if the answer be filed in the Vacation, the plaintiff hath eight days after the beginning of the next ensuing Term to put in exceptions; and they cannot be put in afterwards in

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in either case, without an order or consent of the other fide, the clerk in court refusing to receive them; which if he does, an order may be obtained either on motion or petition, and ferved, and the exceptions delivered at the fame time: And the defendant has from the delivery of the exceptions eight days to confider whether he will fubmit to answer; and if he does submit, he must pay twenty shillings costs; but if not, an order may be obtained to refer them to a Master to look into the plaintiff's bill and defendant's answer, and the plaintiff's exceptions taken thereto, and certify whether the defendant's answer be sufficient in the points excepted to, or not. And if the defendant do, within eight days after delivering exceptions, submit to answer, and do amend his answer (if he lives in London, or within ten miles thereof) in eight days after he has fubmitted to answer; but if he lives twenty miles, or further, from London, he usually craves a commission for taking his further answer, and has till the first day of the ensuing Term to take and return his answer; and such second answer being filed, and twenty shillings costs paid to the plaintiff's clerk in court for submitting to put in a better answer, and such second anfwer being fufficient, the plaintiff may then go on and reply to fuch answer; but if the defendant refuses to submit to answer such exceptions, the exceptions, on motion or petition, are to be referred to a Master; who is to certify whether the answer be sufficient or not. The plaintiff cannot refer exceptions to a first answer till eight days after they are delivered, and not submitting to put in a further answer: But on a fecond insufficient answer they may be referred immediately.

The plaintiff must serve the defendant with a warrant to attend on these references, which is to

days before arguing the exceptions; and if he does not attend, which generally happens, the plaintiff may take out another warrant; and if he does not attend then, the Master may, in strictness, on oath of serving the said two warrants on the desendant's clerk in court, make a report ex parte, of the insufficiency of the said answer: But the Master will sometimes order a third warrant to be taken out, and if he sails then to attend, then, on oath of serving the three warrants, as before, the Master will make a report as before; but the desendant for most part appears.

The infufficiency appearing on the exceptions, is to be infuffed on; and no new exceptions can be

put in.

No new commission, by the strict practice of the court, shall be awarded for taking any second answer unless by order, on affidavit made of the party's inability to travel, or other good cause to satisfy the court touching the delay, and first paying the costs of such insufficient answer; or by the consent of the plaintiff's clerk for expediting the cause; but no such second commission is usually consented to.

If the first answer be reported insufficient, the defendant is to pay forty shillings costs; and if taken in the country by commission, two pounds ten shillings; three pounds for a second answer; sour pounds for a third; sive pounds for a sourth, w.c. And the fourth answer being reported insufficient, the plaintiff may move, on the Master's report siled, that the defendant may stand committed; and the defendant shall not be discharged till he has put in a full and sufficient answer, and paid the costs of the contempt.

This rule of committing defendant is grounded on good reason, because in this case the party

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may be held in hand a year or more before he arrives at a perfect answer, which the court will never indure.

But if the answer be reported sufficient, the plaintiff shall pay the defendant forty shillings costs.

If the Master reports the answer insufficient in one fingle exception, the defendant must except to the report, or submit according ro the report; if he doth not except, but fubmits to answer overhe must take care to put in a full answer, for have ing once submitted to answer over, he has allowed the judgment of the Master to be good against him; and in this case he shall not insist by his second answer that he ought not to answer the exceptions; nor shall be in case of a single exception afterwards except to the report, and bring it on for the judgment of the court, whether he ought to answer over or not; for this he might and ought to have done at first, and there he would have had the opinion of the court whether his first answer had been good or not, which upon his fecond answer he can never have, because he has concluded himself by submitting to answer accordmg to the report.

But it is conceived this rule does not hold good in all cases; for where the Master reports the answer insufficient in three or four, or more exceptions, it often falls out that one or more of these exceptions are fatal to the party; and so it would appear if the party excepted to the report; and therefore in these cases the party may submit to answer over as to such of the exceptions which he believes to be against him; but as to the others, if he is advised that his first answer is sull in those points, or if they are of such a nature as ought not to be answered, or altogether immaterial, the defendant in these cases may, notwithstanding he has put in a farther answer to the report, afterwards

wards except thereunto, and have the opinion of the court thereon; and it was never held that he was in that case concluded by the report, or bound

to answer according to the report.

If the first answer be reported insufficient, the defendant, if he answers again without excepting to the report, must answer all the points reported insufficient, although the same exceed the charge in the bill; and the plaintiff, in fuch case may also. by motion or petition, obtain an order to amend his bill without cofts, amending the defendant's copy of the bill. I Chan. Ca. 60. Eq. Abr. 35; Ca. 6.

And if a first or second answer be insufficient: process of attachment, &c. for want of such anfwer, shall go on as it was before. I Chan. Ca.

238. Eq. Abr. 351. Ca. 6.

When a defendant is in contempt for want of an answer, and an insufficient answer is put in, that is no answer at all; the plaintiff is not to begin his process de novo, but go on regularly from the last process. Lady Abergavenny v. Lady Aberga-

venny. 2 Kel. 5.

Waltes

When an answer is apprehended sufficient, and the exceptions thereto invalid, the plaintiff, notwithstanding, may take exceptions to the Master's report, figned by counfel, and file fuch exceptions with the fenior register, on a double sixpenny sheet of stamp'd paper, upon which you must make a deposit of five pounds with such register; and you may, on such register's certificate, get an order, upon petition to the Chancellor, for fetting them down to be argued. And if the party excepting does not petition and obtain such an order, then the other fide may do it; and in the mean time both sides may prepare their briefs for counsel, for arguing the exceptions to the report.

But the Master's report is conclusive, unless either party take exceptions to it, which is often done on depoliting five pounds with the register, if it be a general report, which deposit must be paid to the other party if the exceptions are overruled, but if they are allowed, then to him who made the deposit; and on reports touching sufficiency of answers, ten shillings, for every exception or distinct branch of an exception, which on arguing shall be over-ruled as frivolous and impertinent; and for fuch as shall be waved and not opened, fometimes ten shillings. And these sums shall be paid over and above the deposit, if the report be affirmed; or out of the deposit, tho' the report be altered.

But it is discretionary in the court to order more; and on arguing the exceptions, the court sometimes

orders that each party bear his own costs.

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If the exceptions, or any of them, are upon arguing thereof, after the hearing, held good and sufficient, the court, in that case usually orders the Master to review and alter his report in those particulars.

Note; If exceptions are found against a defendant upon an answer, he must pay the costs, and put in a better answer; and the plaintist may have one subpana for costs, and another to make a better answer, which are always returnable immediate; and this last subpana is usually served upon the defendant's clerk in court, and the other must be served personally on the defendant, and the costs demanded of him: And if the exceptions be upon another matter, the court determines them upon hearing them argued; or sends the parties back to the Master to review his report.

After exceptions taken to an answer, and the defendant submits to put in a farther answer to those exceptions, or the Master reports the answer to be

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insufficient, and the defendant puts in a second answer, no new exceptions can be taken to the second answer; but if the plaintiff is advised that the second answer is also insufficient, he may either move or petition the court, and obtain an order that it may be referred to the Master to see if the second answer be sufficient in any the points excepted unto, or not; and if the Master reports the second answer insufficient, the defendant must put in a third answer, unless he excepts to the Master's report, as before.

There are other cases where exceptions are taken to the answer, and where the party has not answered them at all, but insists on his right, and that he is not bound nor ought to answer them; and in this case the Master generally reports according to the exceptions, because they will not take upon themselves to judge how far the defendant ought or ought not to answer, but leave it to be determined by the court; and when it comes on upon an exception, the court frequently dispenses with defendant's not answering the exceptions, where immeterial or matters of title.

Exceptions may be likewise taken to a report,

either in lunacy or bankruptcy.

Care must be taken in drawing exceptions, that no mistake happen therein; for no new exception

is to be added. Bunb. Rep. 246. pl. 317.

An answer being reported not scandalous or impertinent, if the plaintiff except to the report, he must shew specially wherein it is scandalous or impertinent, and not say generally that it is either,—(So in case of insufficiency,) in order that what is so pointed out may be expunged. 2 Will. Rep. 181.

If a bill or answer be referred for scandal, and reported by the Master to be scandalous, if the Master has once expunged this scandal, the party

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cannot then except to the report, because when the scandal is so expunged, it cannot appear by the record what that scandal was; and it was the party's sault that he did not except to the report sooner. 2 P. Will. Rep. 181, 182.

On exceptions to an answer, the defendant having fworn he received no more than the sum of to his remembrance, it was allowed to be a

good answer. I Vern. 470.

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If the plaintiff excepts to the answer, and the exceptions are referred, and the Master certifies the answer insufficient in the points excepted to, and then the defendants sully answer the charges of the bill; and if it happen that the exceptions exceeded the charges of the bill, and the Master, upon a reference of the second answer, reports that insufficient likewise in the points excepted to, and the defendants except to the report, and insist that they had answered well, having answered all the matters of the bill, yet they are also to answer all the matters of the exceptions as well as of the bill, they not having excepted to the first report. Crisp v. Nevile, 1 Chan. Ca. 60.

Defendant having answered the bill, cannot afterwards refer it for scandal. 2 Will. Rep. 311.

Exceptions may be taken to an award upon submission by order of court. 1 Chan. Ca. 186. Vern. 470.

Three defendants put in joint and several answers, which are reported insufficient; two of them wave exceptions, the other insists upon having his argued;

allowed. Ayl. 46.

Every supplemental answer is parcel of the answer, and must be so alledged; and no perjury can be assigned in one without the other. 2 Keb. 516.

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squire of the ferroise only, and not so draw in p

Exceptions to an answer for insufficiency.

. and then except to the report, because when the

Between A. B. plaintiff, C. D. defendant.

In Chancery, and stom on bevisces and

Exceptions taken by the complainant to the answer of the said C. D. defendant, put in to the said complainant's bill.

FIRST, for that the said desendant hath not set forth (the matter you except to, and in like manner the third, fourth, and as many as shall be thought proper.)

In all which particulars the plaintiff excepts
against the said desendant's answer, as
imperfect, evalive and insufficient, and
therefore prays, that the said desendant
may put in a better answer thereunto.

Of bearings upon bill and answer, &cc.

A Cause may be set down to be heard upon bill and answer, provided there be matter of equity admitted by the answer sufficient to be found a decree upon: So that when the defendant hath answered, the plaintiff ought to advise with his counsel concerning the answer, and if he finds that upon the answer alone, without farther proof, there he sufficient ground for a decree, then to proceed to hearing upon hill and answer, without farther lengthening the cause.

And if it be needful to prove one, or a few particular points of the bill, and to fallify one or two matters in the answer, the plaintiff ought to examine to those points only, and not to draw in plead-

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ing or proofs, any more than those necessary points,

on pain of costs.

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But note; at this time there very rarely is filed a special replication, but only a general replication to the answer: and it is at the plaintiff's discretion what witnesses to examine: But if he examines to more points than necessary, the court considers that at the hearing, and perhaps may make the plaintiff pay costs for examining to what is unnecessary.

But if the plaintiff reply to an answer, and without rejoinder, or rules given for producing witnesses and passing publication, brings the cause to hearing, the answer shall be taken wholly true, as if there had been no replication; for the defendant's opportunity of proving his answer is taken from

him. Vide I Chan. Ca. 21.

Where the defendant disclaims, or doth not answer, but pleads or demurs, the plaintiff is not to reply without arguing the plea or demurrer; and if he serves the defendant with a subpana to rejoin, the defendant may have costs for the unjust vexation.

If a deed or will is confessed by the answer, and referred to, there ought to be no replication; but to proceed thereupon to a hearing on bill and answer. And if a trust is confessed by the answer, there needs nothing farther but to go to hearing; and the court will refer the accounts of the trustee to be stated by a Master; and when that is done, decree a discharge of the trustee on his paying the balance: The costs between the parties in that case being usually reserved by the court until after the Master shall have made his report.

If a subpana to rejoin be not served, &c. though it be sued out, the cause may be heard on bill and

answer.

If plaintiff replies to the defendant's answer, but never serves him with a subpana to rejoin, he may Vol. I. Cc rejoin

rejoin gratis, in order to prove his answer, though plaintiff cannot force him to rejoin without a sub-

poena. Moseley 123. pl. 77.

Where witnesses have been examined and no replication, the court at the hearing, or even after a decree, will order the replication to be filed nunc pro tune; a cause is at issue by the replication, and a rejoinder is never actually filed. Moseley 298,

The method of hearing a cause upon bill and anfwer, is generally thus: After the substance of the bill has been opened by some junior counsel, and the matter of equity thereof duly represented to the court, the answer of the defendant is to be opened by his counsel, and must be admitted true in all points, as to the particulars charged in the bill; and no other evidence is to be given than what arises from the answer itself, or being matter of record, to which the answer refers, and which is proveable by the record: But in many cases, though the cause require no witnesses, yet it may be necesfary for the plaintiff to reply, &c. whereby the defendant will be put upon proof of his answer, and the plaintiff admitted to prove the matters of the bill.

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Where a cause is brought to hearing, and there wants proper parties, the court will order the plaintiff to amend his bill, and pay the costs of the day to those defendants, that were brought to hearing; which if brought on before my Lord Chancellor, is five pound costs; and if at the Rolls, is three pounds six shillings and eight pence.

Note; That an order of dismission (if duly signed and inrolled) will be a good plea in bar of a

new bill brought for the same matter.

Lord Keeper Wright declared, that where on a bill brought by A. against B. C. and D. et al', the defendant had examined some witnesses, that B. being now plaintiff, may read those depositions against

A. or any of the defendants in the first cause. Preci

A motion was made to inspect the exhibits proved in the cause before hearing; but there being no injunce of any such order, the Chancellor would do nothing in it. 2 Stran. 764. 2 Wil. 410.

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CHAP. VIII.

Of pleas, answers, and demurrers.

A Plea in equity is a special matter pleaded by a defendent to a bill, or to some part thereof, shewing and relying upon one or more facts set forth in the defendant's plea, as a cause why the plaintiff ought not to be relieved in some matter contained in his bill, in bar to any relief or discovery sought after and prayed by the bill. It is nothing more than a special answer shewing, or relying on one or more things as cause why the suit should either be dismissed or bar'd.

The bill was for a fum of money due to the plaintiff's wife. The defendant (who was her brother) pleaded a release made by her, upon securing to her another sum by bond, which release was executed by her as a single woman, she living as such at that time in the house of the defendant; and moreover that, after the marriage c me to be known, the husband (the plaintiff) had accepted interest, and thereby ratisfied her act.

Lord Chancellor Hardwicke: Perhaps this may be a good defence, but it is not proper for a plea. A plea is proper, when as the matter of the defence can be reduced to a fingle point, which will bar the plaintiff's demand; but then it is of use, because, by having the judgment of the court upon that

Cc 2 point,

point, the parties are faved the expence of an examination: But where there go many circumstances to the defence, as in this case, it is of no fort of use, because there must be an examination afterwards whether those circumstances be true or false: And it would also be highly improper that the court should first give judgment upon the circumstances, and that an examination should come afterwards. August 1739. Pleas and demurrers after the fourth and last Seal, Lincoln's Inn Hall.

And pleas in equity are of three kinds, viz. 1ft, a plea to the jurisdiction; 2dly, a plea to the person;

adly, a plea in bar.

(1st) A plea to the jurisdiction must shew that the lands lie out of the jurisdiction of the count; that the matters were transacted, or that the party lives out of the power of the court, and the reach of its process; as out of the kingdom, or in County Palatine, &c.

(2dly) A plea to the terfon must shew that the party is disabled by outlawry, excommunication

&c. to be relieved.

(3dly) A plea in bar, as it goes more to the me rits, and often causes a dismission of the bill, the court will fometimes, on arguing of fuch play order it to stand for an answer. And pleas of the kind are various; as acts of Parliament, fines an recoveries, releases, former decrees, &c. purchann without notice; but notice must be denied. I Van 179. 2 Vent. 361. S. P. by way of answer, an 2 Chan. Ca. 161. not by way of plea.

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Though a plea in bar be allowed, yet the plan tiff may reply to the truth of it, and put the fendant on proving it, and may except to any oth

part of the answer. Gilb. 184.

And observe, that if there be any fraud alled ed in the bill, it must be denied by way of anim and not by way of plea. 1 Vern. 185.

The statute of limitations is no plea where the bill charges a fraud; but then it should be charged by the bill, that the fraud was discovered within six years before the bill filed. 3 Will. Rep. 143. South-Sea Company v. Wymondfell.

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A. (by parol) agreed to lease certain mines for twenty-one years, in purfuance whereof plaintiff entred and fought for lead, and now fued for a difcovery and performance of the agreement: Defendant pleaded the Statute of Limitations; and that the plaintiff after his entry quitted the mines, and never infifted on his bargain till defendant had difcovered the lead. Benefit of the plea faved to the hearing. 2 Vol. Abr. Eq. 76. C. 36.

In the case of the South-Sea Company, in whom the estates of the late Directors are vested by act of Parliament, where the Statute of Limitations might have been pleaded against the late Directors, it is pleadable against the Company, who stand

but in fuch Directors place.

So where though the affignee of the effects of a bankrupt claims under the act of parliament, yez as the Statute of Limitations might be pleaded against the bankrupt, by the same reason it is pleadable against such affignee. 3 Will. Rep. 144.

A plea to the jurisdiction, or in disability of the person, must be upon oath. And all pleas and plea of outdemurrers must be signed by counsel, and also pleas lawry must of matters of record.

Note ; be upon oath. 2 Vern. Ca.

33. Contra of a plea of outlawry, with the common averment of the identity of the perfon ; for it may come in on the other fide to aver, that he was not the fame person. ldem 182. In order to avoid pleas of outlawry, the plaintiff may make all those that have outlawries against him defendants.

A plea of privilege must be put in upon oath. 2 Vern. Ca. 80.

Account stated is a good plea; but if there be any agreement to rectify mistakes, it shall not conclude though under hand and feal. Rep. 183.

If

If plaintiff replies to the defendant's plea, he

thereby admits it to be good.

Bill for a modus—Defendant pleaded a verdict and judgment obtained by him in an action of debt upon Stat. 2 Ed, 6. against one of the now plaintiffs, tenant of parcel of the land; and that Lord W, owner of the lands, endeavoured then to support the pretended modus in behalf of himself and tenants, Plea allowed. Finch 13.

Bill against the Clerk of the Skinners' Company to produce books of account of the Company; he pleads that at his admission he was sworn not to shew or deliver such books without consent of the Master and Wardens, and his plea allowed,

Finch 24.

Statute of Limitations pleaded in bar to a bill brought for a fatisfaction of 2001, paid by plaintiff's husband for the use of defendant's husband, as appeared by a note or letter from him to plaintiff's husband. Plea over-ruled, Finch 14.

A release subsequent to a decree pleaded, Vide

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Gilb. Rep. in Eq. 184.

Reconciliation with the husband after elopement with an adulterer pleaded in behalf of dower, and

plea allowed. 3 P. Will. 269.

And pleas in bar of matters in pais, are to be upon oath, except the matter of the bar be fingle, and so full a bar, that the bill requires no further answer; the whole is generally set forth by way of answer, and then so much of it as goes in bar being relied upon, by way of plea; and this is intitled, The plea and answer of the defendant,

Or the defendant may plead the matter proper in bar, and then add, by way of answer, what further is necessary as to fraud, &c. charged in the

bill. 2 Chan. Ca. 161.

If the defendant's time for answering is out, and he, upon motion or petition, obtains further time to answer

answer only, without saying that he may be at . If defendliberty to plead, answer or demur to the plaintiff's ant obtains bill; he shall not in this case (though he may af- an order for terwards, upon adviting with counsel, find reason swer, he to plead or demur) put in a plea or demurrer with- may put in a out obtaining an order for that purpose.

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time to anplea, if the Order is not to answer

only. Mofeley, 207. pl. 116.

A plea cannot be taken upon a general commission to take an answer only: But if the defendant obtain an order for a commission to plead, anfwer or demur, he may take and return a plea and demurrer by fuch commission, or an answer and demurrer, or an answer only.

After a proclamation returned, no plea or demurrer can be put in or returned without leave of the court; but if put in, it will be discharged on that fuggestion: Therefore the defendant who defigns to plead or demur, should take care that he be not guilty of delays; and would do well in applying to counfel immediately. Vide Ord. Chan. 121.

Note; Where there are matters alledged in a bill to which the bar of the plea or demorrer reaches not, or some circumstances relating to the matter in bar that require a particular answer; as fraud, &e. the defendant must answer upon oath as to those, and then fo much as goes in bar is relied on by plea or demurrer; and this is intitled, The plea and answer of the defendant; or, The plea, answer and demurrer of the defendant.

If the defendant is doubtful, whether, if he plead the matter of his defence, the plea will be allowed by the court; he may shew the whole matter by aniwer, and then infift and rely on it, almost as if he had pleaded it, only he is not to call it his plea,

nor have the benefit thereof till hearing.

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If after a fuit commenced at common law, or any other inferior court, a bill shall be exhibited in this court to be relieved for the same matter, the dependency of a former suit shall be admitted as a good plea, and the defendant is not to be put to motions for an election or dismission; and that plea shall be proceeded in as in case of a plea of a former suit depending in this court for the same matter.

Where a defendant pleads the pendance of a former suit in another court for the same matter, if it is in any of the courts of Ireland, or here in England, on coming in of this plea, the plaintiff may and ought to obtain a reference to the Master, and to procure his report, that the former suit is not in the same matters; and in such case the plea is to be over-ruled, or the defendant may bring on his plea; and if it is well pleaded, and both suits appear to be for the same matter, the plea is always allowed.

Where the plaintiff apprehends the plea to be good, though not true, he may reply to the plea, and take iffue upon it, and proceed to examine witnesses as in case of an answer; and in this case, where he replies to a plea before it comes to be argued, it is always an admission of the plea as if it had been argued and allowed, only the defendant is put to the proof thereof, and so he may when it is argued and allowed; and if he proves his plea, the bill must be dismissed on hearing. So if the plaintiss amends his bill before he argues the plea, it is an admission of the goodness of the plea, as if the same had been allowed on arguing. So likewise of a demurrer.

If the defendant put in a plea, which on perufal the plaintiff's counsel apprehends will not hold good, then when the defendant hath enter'd it with the register (which must be in sour days after filing)

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and after an order is obtained for procuring the fame to be fet down to be argued before the Lord Chancellor; you may prepare your briefs of the bill and plea, and get your counsel ready for arguing.

But if a defendant does not enter his plea within four days after filing, it is over-ruled of course, and the plaintiss, on the register's certificate of its not being entered, may take out a subpoena for costs as of over-ruling a plea, and another subpoena against the defendant for making a better answer: And the same shall not afterwards be admitted to be set down or debated, unless upon motion it shall be ordered by the court.

All pleas in general ought to be entred with the register four days after the filing of the plea.

If the defendant does not petition to fet down the plea to be argued, the plaintiff may petition and obtain an order from my Lord Chancellor for

that purpose.

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When a reference is made to a Master, of a plea of pendancy of a former bill depending for the same matter, if the Master reports, that both bills are for the same matter, the plea shall be allowed, and the party is intitled to costs.—The plea cannot be let down to be argued, for then there would be two dilatories; but the plea is ipfo facto over-ruled; and thereupon the party takes out a subpoena for five pounds costs, in like manner as upon the arguing of a plea. But in the present case, the Master made a special report, that the former bill of revivor was brought for the same matter, and by the same plaintiff; but by a different description, as being in a different right; therefore the court must determine, and the rule as to cofts on the plea Vide Barnard. 84. Huggins and The York Buildings Company.

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The defendant who pleads ought to be careful in the caption thereof; for if the comm illioners return, This answer was taken, without the words, The auswer and plea of the defendant was duly taken, and the defendant was sworn thereto upon his corporal oath upon the Holy Exangelists, &c. the plea will be rejected, because it doth not thereby appear that the party was ever sworn to the plea; but the court oftentimes indulges the party to amend the caption, looking on it rather as a mistake of the commissioners, than a fault of the defendant. Vide 2 Chan. Ca. 208.

A defendant may plead to part of a bill, and anfwer to the other part; or may plead as to part, demur to another part, answer to the residue.

A defendant cannot demur and plead to the same part of the bill, for the plea over-rules the demurrer.

To plead to fuch part of the bill as is not answered, is a bad form of pleading, because it puts the court to the trouble of seeing what is and what is not answered, and deprives the plaintiff of the benefit of taking exceptions to the answer. Moseley, 40. pl. 22.

On time given to answer, defendant may put in a plea, for that is as an answer, and on oath,

2 Will. Rep. 80, 81.

Either fide may, upon petition to my Lord Chancellor, fet down the plea to be argued; and if on arguing thereof it is allowed, the plaintiff is to pay five pounds costs to the defendant, to be recovered by subpana; but if over-ruled, or ordered to stand for an answer without liberty to except, then the defendant pays sive pounds costs to the plaintiff: But where the words are, To save the benefit of the plea till bearing; no other use I think could ever be made or found by these words, but that they save the defendant costs for over-ruling his plea: And this seems to be, where it is doubtful to the court

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court whether there be not some equity against the matter pleaded; and therefore the court often makes use of these words. Yet where the plea is very faulty or naught, though the court often saves the benefit thereof till hearing, yet they declare it shall not save costs.

Plaintiff's bill suggested, that defendant had lent him money, and that he had trusted the defendant to compute the interest, that there was a miscomputation, and that plaintiff had paid more than was due; therefore the bill prayed, that defendant might set forth how much interest was due, and how much was over-paid: Defendant pleaded the statute against usury, as to legal Interest; defendant shall not answer as to the legal interest, but he shall answer to what he did receive more than the interest. Plea over-ruled as to all but the words legal interest. 2 Vol. Abr. Eq. p. 70. Ca. 7.

Plea of a purchase over-ruled for not answering

to the mortgage. Gilb. 185,

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In the pleading of a purchase, or a mortgage, defendant should plead that the seller or mortgagor was, or pretended to be, seised in see. 3 P. Will. 281.

Bill of review and error assigned in the decree.

Plea and demurrer thereto. Finch 36.

A second plea for want of Parties is not good; but such plea cannot be suppressed on Motion, but must be set down to be argued. Moseley 207.

Bill by administrator for discovery of the personal estate.—The defendant pleads, that the supposed intestate made a will, and produced it, and that plaintiff was privy to it, and was cited in the spiritual court to prove it.—Plea over-ruled, as containing no equity why defendant should not answer to the discovery of the estate. I Vern. 107.—But where the whole matter is properly in the conuzance of the spiritual court, such demurrer allowed. Finch 218,

Outlawry

Outlawry is no good plea to a bill brought by an executor. Killigrew and Killigrew, I Vern. 184.

A former bill depending was pleaded in bar of a fecond; but though both bills were of the same nature and effect, yet as the latter had some new matter, ordered, that being the plea was good, the plaintiff should pay the usual costs of a plea allowed, but the defendant to answer the second bill, and the former bill dismissed with twenty shillings costs. Crosts and Wortley, Mich. 26 Car. I. I Chan. Ca. 241.

The bill being to have an account of a trust, the defendant pleaded he was intrusted for three children, viz. for the plaintist and his two brothers, and that the other two not being made parties, he was not bound to answer; for otherwise he might be thrice called to an account for the same matter: and the plea was allowed. Hanne and Stevens, I Vern. 110.

The plaintiff intitles himself as administrator; the defendant pleads the plaintiff is not administrator; it was objected, this was a negative plea: Per cur. Allow the plea, it is a good plea in abatement at law. Win and Fletcher, I Vern. 473.

A purchaser must plead that he had no notice. Cresset and Kettleby, Hill. 1683. 1 Vern. 219.

Detinue of Charters is a good plea at law in bar of an account, and so it is in equity. 2 Vern. 33.

In a plea of purchase it is a sufficient denial of notice to say, that at the time of the purchase he had no notice, without saying, at any time before; for if it is proved he had notice before, he is liable to be convicted of perjury. 3 Will. Rep. 243. Jones v. Thomas.

In all cases of a plea of purchase or marriage settlement, notice must be denied though not charged by the bill: and it may be sufficient to deny it either by plea or answer, notwithstanding the objection

Abs. 333.

De Pleas, Answers and Demurrers.

lection that it ought to be in the plea, fince all the defendant has to do is to prove his plea; for the defendant is not to prove a negative, viz. that he had no notice; however it feems best to deny notice both in the plea and answer. By Lord Parker, Albion and Curfon, Hill. 1719. S. P. By Lord King, Weston and Berkley, 17 July 1729. 3 P. Will. Rep. 244.

A plea of a purchase was over-ruled for not answering to the mortgage. Meder and Birt, Gilb:

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Two of the defendants being officers of the Exchequer, plead the privilege of the Exchequer; but the plea was over-ruled, because there was a third defendant, who had no right of privilege, Fansbaw and Fansbaw, Trin. 1684. I Vern. 246.

In pleading the Statute of Frauds, it is necessary to fay that the agreement was not reduced into

writing. Prec. in Chan. 535.

There was a parol agreement for a lease of twenty-one years, upon which the leffee entred, and enjoyed for fix years; and then the Earl brought a bill against him to compel him to execute a counterpart for the refidue of the Term. The leffee pleaded the Statute of Frauds and Perjuries, which on argument was over-ruled, the agreement being in part carried into execution. 2 Strange 783.

The Statute of Limitations is no good plea where the estate in law is in trustees. 9 Mod. 32.

A decree was made in the court of Exchequer against tenant for life, to hinder him from committing waste, which decree, and a perpetual injunction to stay waste, were founded on a deed of fettlement; and on a bill in Chancery to fet that deed aside, the defendant pleaded the decree in the Exchequer, but it was over-ruled. Wing and Wing & al', 10 Mod. 109.

Of Pleas, Antwers and Demurrers.

If a bill be brought for an account of the profits of mines, and the defendant pleads a special act of Parliament, which gives an exclusive jurisdiction of all matters arising within the mines to the courts of A. but does not aver there is a court of equity, there the plea will be over-ruled. Strode and Little, 1 Vern. 58.

Purchasers without notice. Eq. Abr. 333.

If a bill is brought to be relieved upon a trust, and charges the defendant with notice of the trust, before the taking his conveyance, the defendant by way of answer (a) may deny the (b) notice, and plead he is a purchaser for a valuable consideration, without shewing what the consideration was, Mich. 15 Car. 2. between Moor and Mahew, 1 Chan. Ca. 34. Though it was objected, that sive shillings is a valuable, though not an equitable consideration. Sed quere, if the consideration

ought not to be fet forth?

But where the bill charges notice before the defendant took his conveyance, and the defendant by (c) way of answer denies the notice at the time of his purchase or contract, and pleads he is a purchaser, &c. this plea is nought, being founded upon the answer, which denies only notice at the time of the purchase, which may be understood of the contract, and not of the execution of conveyances; and if there was any notice before the conveyance executed, it would charge the defendant. Mich. 15 Car. 2. between Moor and Maybew, 1 Chan. Ca. 34. such plea was over-ruled, 1 Danv. 771. S. C. 778. Eq. Ab. 38, 334.

⁽a) Must deny the notice, else his plea'is not good. 2 Vent. 361.
(b) Where notice to him that purchases for another, shall affect the purlaser himself. 2 Chan. Ca. 20.

chaser himself. I Chan. Ca. 39.

(c) Notice must be denied by way of answer, and not by plea. 2 Chan.

Ca. 161. Notice of an incumbrance any time before the conveyance executed, shall bind him,

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A bill was brought for discovery of tithes by a lesse of a parson. The defendant pleads the 13 E. c. 20. s. 1. against non-residence in bar, and held to be a good plea both as to the discovery and relief. Gilb. Eq. Rep. 228.

Plaintiff entitles himself as administrator.

Desendant pleads that plaintiff is not administrator.

A good plea in abatement in equity as well as at

law. 1 Vern. 473.

The plaintiffs being mortgagees, the bill was to discover settlements, and what estate the mortgagor had in him; to this bill the defendants pleaded two feveral fettlements, whereby the mortgagor was only tenant for life; but the plea was overruled, because the defendants did not offer, by way of answer, to admit the tenant for life to be dead, that so the plaintiffs might try the validity of those settlements at law; for if they should expect till the tenant for life was dead, their witnesses that could prove the fraud might be likewise dead; befides, the defendants pleaded those settlements to be made after marriage, in pursuance of promises and agreements made before marriage, and did not fet forth what fuch promifes or agreements were. Lord Keeper & al' v. Wyld & al'. Hill. 1682. 1 Vern. 139.

A plea of a purchaser for a valuable confideration over-ruled, because the defendant did not alledge seisin and possession in the person from whom he bought. Trin. 1684, Travanian and Messe,

1 Vern. 246.

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A bill was brought for an account against one as bailiff, suggesting fraud; if defendant pleads that at such a time he did account, he need not go on and set out an account. Gilb. Rep. in Eq. 228.

Bill by the heir to be relieved by a judgment. Creditor, who had brought a feire facias against him,

him, on a judgment obtained against his ancestor! The judgment-creditor pleads, that the now plains tiff had pleaded (at law) that he had no affets by descent, and therefore needs no relief from this court, if his plea be true, and the judgment-creditor.

tor's plea allowed. Finch 69.

The bill was to be relieved touching certain lands, which the plaintiff claimed title to as heir on the part of his father: The defendant pleaded, that the mother was the purchaser of those lands, and that the defendant was heir on the part of the mother, ex parte materna; but it not being pleaded that the defendant was beir of the whole blood to the mother (and in fact he was only of the half blood) therefore the plea was over-ruled. Hill. 1686,

Addison and Hindmarsh, I Vern. 442.

The defendant pleads, that the plaintiff brought a former fuit for the same matters, which fuit is still depending, for aught he knows to the contrary; for the plaintiff it was infifted, that this plea was not good, because he does not positively aver, that the former fuit is still depending; and no iffue can be taken upon his knowledge to the contrary; but the Matter of the Rolls allowed the plea, because the defendant ought not to have fet it down to be argued; for by that he admits, that the former fuit for the fame matter is depending; but the plea ought to have been referred to a Master to examine whether there was a former fuit depending for the fame matter, or not; and faid, there needs no politive averment, that the former fuit is still depending, for that is examinable by the Master; and the defendant never swears a plea of a former fuit depending. 1 Vern. 332. Vide Hard. 160. where a plea was held nought for want of an averment in the conclusion.

After a plea put in there can be no motion for an injunction till the plea is argued; but the court

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at the instance of the plaintiff, will speed the arguing of the plea; and will give leave, that if the plea should be over-ruled, that then the plaintiff may move at the same time for an injunction. 3 Will. Rep. 396.

Where testator had pleaded to a bill and died before the plea was argued, the executor may plead de novo, for the former cannot be argued. Ca. in

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A plea was held ill, because it went as to any fraud suggested, &c. and likewise because it did not aver, that the accounts which were pleaded, were just and true accounts. Mich. 1727. Halins and Draper.

Outlawry in a relator, where the fult was in the Duchy Court by Mr. Attorney General, touching Coal-Mines in Derbyshire, allowed a good plea.

Prec. in Chan. 1 3.

Where a decree in a former cause may be pleaded in bar, vide Barnard. 77.

All pleas whatever are argued in open court.

It is a rule in equity, that the answer over-rules the plea, where the defendant answers to the same thing he insists upon by his plea, for he ought not to answer to it. Earl of Clanrichard v. Burck,

1717. 4 Vin. Abr. 442. pl. 1.

It is sufficient for a defendant in a plea to say, he does not know or believe as to the fact or deed of which a discovery is sought by the bill. Ayl. 48. 2. Whether a plea can be received after the defendant has stood out process to a sequestration. Kerry v. Simple. 1716.

If a cause has been formerly dismissed, and the dismission not signed and involved, if this be pleaded, it must be on oath, for till the involment it is

not recorded.

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One is not bound to discover what may subject him to penalty of an act of Parliament. Vern, 109. C. 98.

When the bill is in the disjunctive, defendant

may take it either way. Vern. 220,

A folicitor brought bill for fees, and defendant pleaded 3 Fac. c. 6, that plaintiff had not figured his bill, and the plea was allowed. Vern. 312.

One claiming under a voluntary conveyance from tenant in tail, is not compellable by the iffue in tail to discover the deed of intail. 2 Vern. 50.

If administrator in province of York sue a defendant in province of Canterbury, it may be pleaded. Chan. Ca. 186.

Purchase under an outlawry pleaded and allowed.

Gilb. 184.

A. obtained an annuity or rent-charge on certain lands of B. in Ireland; B. fuggesting some fraudulent practice here in London in obtaining it, exhibited his bill against A. being there, to be relieved; A. pleaded the jurisdiction of the cours, the land lying in Ireland; but the plea was overruled, and he was ordered to pay costs for endeavouring to oust the court of its jurisdiction. By Lord Chancellor Nottingham, 1682. 1 Vern. 77. Affirmed by Lord Keeper North upon re-arguing, who said, that the objection, that the court could not sequester the land in Ireland, was of little weight, for that it did not appear but that the defendant had other lands in England which would be subject to a sequestration.

Bill to discover a title and deed; defendant pleads a conveyance from the plaintiff himself, and a verdict against plaintiff's title on full evidence, and demurs as to the discovery of the purchased deed;

-both allowed. Finch 205:

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The defendant was committed because he would not answer, the land lying in the Cinque Ports. 1 Chan. Rep. 140.

In a plea of privilege of the University of Oxford, the privilege must be pleaded under seal of the University. 2 Chan. Rep. 104. 2 Vent. 362.

Plea of outlawry, if it be in any fuit for that duty touching which relief is fought, is sufficient, and plaintiff may take out process to enforce a better answer.

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After plea of excommunication, plaintiff producing letters of absolution may proceed. Chan. Ca. 186.

Parol agreement is destroyed by writing, and defendant need not answer, but plead Statute of Frauds.

The Bishop of Wortester brought a bill against an assignee of a lease, charging it to be expired; defendant pleaded that he was a purchaser of the lease, and was informed sifty-seven years were then to come, and therefore he gave nineteen years purchase for it; allowed a good plea. 2 Vern. 255.

Bill against an administratrix to discover the intestate's estate; she pleads administration granted to another by the prerogative court, by which the administration granted her by an inferior court is repealed. Plea over-ruled with costs. Finch 233.

After a decree, if the party against whom the decree is made, intends to review it, but does it by way of original bill, and not in form, nor with the ceremonies of a bill of review, the defendant in this new cause may plead the decree in bar.

Bill to discover the trust of a mortgage, and to redeem.—Defendants demur as to the trust, being ready to reconvey on payment of principal

Df Pleas, Antwers, and Demurrers.

and interest. - Demurrer allowed with costs. Finch

If outlawry or other matter be pleaded, and the plea is over-ruled, no other plea shall be afterwards pleaded; but the defendant must answer.

A plea of outlawry must be pleaded sub pide sigilli. The plea continues only in force till the outlawry be reversed, but hinders all proceedings in the mean time; and when the outlawry is reversed, the plaintiff upon paying of 203. costs (if the plea is not argued) serves the defendant with a subpana to answer the same bill. Ord. Chan. 98.

Excommunication in the plaintiff must be plead.

ed sub rede sigilli.

If by the defendant's overlight, neglect or default in not attending, his plea is over-ruled; the court, on motion or petition in time, will order it to be re-argued, the defendant paying the costs of over-ruling.

Plea of the County Palatine of Chester allowed.

Vide Finch 451.

Where a matter is pleaded that is not of record, and the plaintiff defires to have the opinion of the court, whether, allowing the matter to be true, it is a sufficient bar to the suit, it must be argued; and being found sufficient, the plaintiff is to take issue, whereupon the defendant must make proof of the truth of his plea, by depositions, &c. as it the case of an answer.

Plea of non-residence to a bill for tithes, allowed.—And defendant needs not answer as to the quantity, quality or value of the tithes, as when he pleads a modus, because there he doth not deny that nothing is due.—Here the plea goes in denial and bar of the plaintiff's whole demand. Gill.

228. Com. Rep. 392.

See forms of pleas posea, p. 394.

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Demurrer is the allegation of the defendant, which admitting the matters of fact, or some of them alledged by the plaintiff in his bill, to be true, shews, that as they are set forth by the plaintiff himself, they are insufficient for him to proceed upon, or to oblige the defendant to make answer unto; and therefore it demands the judgment of the court, whether the defendant shall be compelled to make answer to the plaintiff's bill, or to some certain part thereof.

Demurrers are of various kinds. A man may demur for want of parties, or for want of equity in the bill, and for many other causes, as the nature of the case requires.

If one demurs to a bill, and that demurrer be ill, the defendant may shew a fresh cause of demurrer at the bar ore tenus; but if that be good the desendant cannot have his costs. 3 Will. Rep. 371.

Note; By the rules of the court every demurrer hall express the several causes of demurrer.

Cor. Lord Hardwicke, Lincoln's Inn Hall, 9 Aug. 1739. The Earl of Suffolk v. Green & Monk.

THE bill was for discovery, and to perpetuate the testimony of A. who could prove the allegation, which was an usurious contract, viz. a bond of 4000 l. of August 1720. from the plaintiss ather to the defendant Green, in trust for the demandant Monk, upon which the plaintiss sather then a Commoner) had allowed 10 l. per cent. Temium, and so had received only 3600 l. N. B. idid not pray relief, nor offer to pay what was ally due. The defendants severally demurred answered, and by their answer offered to accept

cept what was stated by the bill to have been received, &c. The bond had not been put in fuit They shewed two causes of demurrer:

First. That the discovery subjected them to a penal statute; Secondly, That the court ought not to perpetuate testimony to destroy their debt.

In this case the Lord Chancellor, 22 from Lord Hardwicke, the first a good cause, Mr. Bick. of demurrer, but not the second; and I mell. declared the course of the court to be, that if one cause was good, and the other ill, the demurrer must be over-ruled. Therefore for the sake of the precedent he could not allow the demurrer to fland as to the first cause. But over-ruled it, with a direction, that the defendants should not be obliged to answer as to the usury. Atk. Rep. 450. pl. 20%.

A defendant may demur to any part of the bill, fo as the demurrer be filed before the rule to answer be out, and before he has obtained an order for time to answer; but after such order obtained to put in his answer only, he cannot demur, unless he obtains an order for that purpose.

If a demurrer be to part of the plaintiff's bill, and an insufficient answer to the residue, yet the plaintiff cannot except until the demurrer is argued.

3 P. Will. Rep. 326.

Note; It is usual, in your petition for time to answer, to pray to plead, answer or demur, but not to demur alone, and the order thereupon is drawn up fo.

Demurrers are put in under counsel's hand, ge-

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nerally without oath.

If the defendant put in a demurrer, which is apprehended will hold good, it is the best way for the plaintiff, if he has a mind to drop proceedings, to move and obtain an order to dismiss his bill with costs, to be raxed by a Master; which costs being paid to the defendant, there is an end of the fuit! But no plaintiff can dismiss his bill but on payment of costs to be taxed. But if the plaintiff has equity on his fide, and intends to proceed, he may apply to the court, either by motion or petition; to amend his bill on payment of twenty shillings. cofts; but this is to be done before the demurrer is fet down to be argued, otherwise the plaintiff must pay the defendant the cofts he has been at in gerting an order to fet down the demurrer to be argued, and twenty shillings besides, before he can amend; and if argued and allowed, five pounds. But in case the demurrer will not hold good, then the plaintiff may petition to fer down the demurrer. and prepare briefs, &c.

If a demurrer on arguing be over-ruled, the defendant pays five pounds costs to the plaintiff; but if it be allowed, the plaintiff pays five pounds to the defendant: And after that the defendant may give notice, and move, that the bill may be

dismissed with costs to be taxed.

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If a defendant demur and answer, you cannot proceed on the answer until the demurrer has been argued.

A defendant may demur as to part, plead as to

other part, and answer to the residue.

If a demurrer is put in upon a flip or mistake in the bill, the plaintiff may obtain an order, upon payment of twenty shillings costs, that he may be at liberty to amend his bill, at any time after the demurrer put in, and before the same is set

down to be argued.

And if a defendant obstinately insists on his demurrer, and refuses to answer, though prosecuted to a lequestration for that purpole; and where the court is of opinion, that sufficient matter is alledged in the bill to oblige him to answer, and for the court to proceed upon; the court will de-

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cree the matter of the plaintiff's bill to be taken

pro confesso,

A defendant ferved with process to answer, may by advice of counsel upon fight of the bill only put in a demurrer thereto, if there be cause, or may by like advice be enabled to put in any rust plea, which he hath in disability of the person of the plaintiff, or to the jurisdiction of the court. And fuch demurrer or fuch plea in disability, or to the jurisdiction of the court, under the hand of the counsel, shall be received and filed, although the defendant do not deliver the same in person, or by commission. And therefore if the defendant shall pray a commission, and thereby return a demurrer only, fuch demurrer upon motion will be discharged; or if he returns a plea which shall be afterwards over-ruled, the defendant shall pay five pounds costs.

And note, that the defendant may return a plea only by a special commission, but cannot return

only a demurrer.

If any cause of demurrer shall arise and be infisted on upon debating the demurrer, more than is particularly alledged, yet the defendant shall pay the ordinary costs of over-ruling a demurrer, if those causes which are particularly alledged be disallowed; although the bill, in respect of that particular so newly alledged, shall be dismissed by the court.

And observe, that proceedings on demurrers are the same as on pleas,

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What shall be a good cause of demurrer.

THAT things of a distinct nature are joined in one bill against different defendants. Refolved upon demurter, 15 Car. 2. between Berk and Harris, Hard, 237.

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But where the defendant demurred, because the bill was brought against several defendants, for several distinct matters, yet the demurrer was over-ruled; because the plaintiff, by his bill, had charged the defendant with combination, which the defendant had not denied by answer. Mich. 1686, between Powell and Arderne, 1 Vern. 416.

Any man made a party that is not charged to claim an interest may demur, for he ought to be examined as a witness; and therefore where a bill was brought against A. to discover letters, that would be evidence in a cause between G. and D. and to produce those letters in evidence, A. demurred; and the demurrer was allowed. 2 Vol. Abr. Eq. p. 78. c. 12.

Where a man demurs, for that the bill contains several matters not relating one to the other, and in some whereof the desendant is not concerned, if by answer the desendant doth more than barely deny combination and confederacy, he over-rules his demurrer. Trin. 1687. between Hester and Weston, I Vern. 463. because by his further answer he seems to have waived his demurrer, and given the plaintist an opportunity to reply.

May demur to a bill which seeks a discovery of a thing which may cause a forfeiture. 24 Car. 2. Monnins against Monnins, 2 Chan. Rep. 68.

A bill alledged a custom touching Church-assessing ments, praying an injunction to a suit in the ecclesiastical court; demurred to, and allowed. 2 Vol. Abr. Eq. 78. 6. 11.

Demurer.

Demurrer to a bill, for that an executor doth not alledge probate of the will, which he ought to do, though he needs not fay in what court. 1. Will 762 Tuted Briffith a to anothe T A Little

Demurrer as to relief on a bill by Lord of a Manor to recover a fine on admittance to a copy. hold, and arrears of quit-rent; fuggefting, that by means of unity of the possession of these lands with others, he knew not where to distrain : Defendant answered as to the discovery, and demurrer to the relief allowed good. 3 P. Will 148. 129

A hufband may demur to a bill that feeks a difcovery of hard usage to his wife. Mith, 1682, between Hinks and Nelsborpe, 1 Vern. 204.

Where a bill chargeth defendant with profesfine the Romife religion, defendant may demur. because he is not obliged to answer to that which will subject him to divers penalties. MSS. Ca, in Chan. Wyan against Doughty, Mich. 8 Ann.

It is not proper to demur to a bill for scandal. but the bill is to be referred, and the scandal expunged. Yet a demurrer in this case was allowed. Vide I Vern. 107. Mich. 1682. Page and Mealer and or and panalar too mounter have some

Where a person by his own bill shews that he has no right, a good cause of demurrer. -Past. 24 Car. 2. Micoe and Powell, 1 Vern. 29.

Arbitrators, if they are made parties, may demur, for there can be no decree against them. Trin, 1700. Dr. Steward against East-India Company,

To a bill brought against an heir for payment of a bond, he may demur, unless it be expresly alledged, that he is bound. Croffing and Honor, 1 Vern. 180.

A bill being exhibited to discover a personal estate and will, the defendants demorred, because it appeared by the plaintiff's own shew-

ing,

and the demurrer was allowed as Nel. Chang Rep. 88.

Bill in the Duchy Court for lands, the defendant demurred, because the plaintiff did not expressly aver, that the lands were within the Duchy, which is a circumscribed jurisdiction, and the demurrer held good. Lord Conningsby's Case, 8 & 9,

though it be not pertinent to the matter in iffue.

Abton and Albton, a Vern. 165.

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If a bill is brought by a creditor or residuary legatee against the executors, and other residuary legatees, without some special reason, as insolvency, collusion, or the like, which makes it necessary for to go into equity, this bill may be demurred

The executors of a counsellor at law bring a bill for 200 l. for advice and pains taken by their father in causes wherein defendant was concerned. Demurrer, for that it is within the Statute of Maintenance, &c. demurrer allowed. Finch 75.

Bill for partition of lands in Ireland. Demurrer. Vide Finch 242.

There can be no demurrer to a fubpana in nature of a scire facias, for the subpana is no record, nor any where filed. 1 Chan. Ca. 5. Neither can there be a demurrer to an answer. Vide 1 Chan. Ca. 56. and 2 Chan. Ca. 8. cont.

A demurrer is to the insufficiency of the bill, as for that the wife sued without her husband, where relief is sought for more than the penalty of a bond; so for a discovery of assets, where it was not positively charged assets came to defendant's hands. 1 Chan. Ca. 226.

Where the replication contained new matter not in the bill, nor arising from the answer, but known hibited defendant pleaded and demurred; and allowed. I Chan. Ca. 259.

Husband alone cannot demur for his wife.

Where a bill is brought for any thing for which by the known rules and orders the plaintiff can have no relief, the defendant may thew such matter for cause of demurrer.

No demurrer to ananswer; but where an answer tends to draw a re-examination of a matter (on a bill of revivor) already contained within the decree; the court must be moved for an order to restrain an examination of all matters formerly examined and settled. 1 Chan. Ca. 56.

If plaintiff, upon a demurrer put in, pay 40 s. cofts, and dismiss his own bill, this is no bar to a

new bill. Chan. Ca. 208.

Where a demurrer to a bill of review is allowed, it may be inrolled; but, if disallowed, it shall not be inrolled to prevent the demurrer's being reargued. 2 Vern. 120.

Bill for partition of lands in Ireland: Demurrer, for that the plaintiff may have relief in the court there, and is not proper here. Allowed by Finch

242.

Demurrer, for that the plaintiff's equity was grounded on payment of 55, which is not sufficient

for a decree. Finch 252.

Bill against an attorney to discover a deed; demurrer for that he is an attorney at law, and intrusted by his client with the deed, and ought not to discover the matters come to his knowledge as an attorney. The court ordered him to answer, whether there was such a deed, and where the same is, and to whom delivered, and when he last saw it, and in whose custody; but not to discover the date or contents. Finch 259.

Mes ed; mort politis ton del Demurier

Demurrer as to the power of the Lord Warden of the Cinque Ports to grant a commission of de-

legates. Finch 437.

The defendant made oath, that he could not answer without fight of evidences in the country, and having time given him to put in his answer, a demurrer was put in, yet an attachment went for want of an answer against him. Cary's Rep. 110.

A bill was exhibited against the defendant to have her discover, whether she was married since the death of her husband; to which she demurred, and for cause of demurrer shewed, that several goods and chattels were devised to her by her husband, which she was to enjoy during her widowhood only, and that a discovery might amount to a forseiture of her interest in them; and the court allowed the demurrer. 2 Chan. Rep. 68.

The defendant did not put in his demurrer according to the order of court, and upon motion to have it entered, was denied. Offorn and Paget.

7 Vin. Abr. 540. pl. 3.

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J. S. brings a bill against B. his father, to recover divers sums of money from B. and also 10,000. on a stale bond of above twenty years standing. The defendant demurred as to that part of the bill that prayed relief on the bond, or to recover the money due thereon; for that the plaintist had a remedy for the same at law, the bond appearing to be in his custody, and taken in his own name; and the demurrer was allowed. 3 P. Will. Rep. 395.

Defendant had leave to plead, answer, and demur; but not to demur alone: He demurs, and answers only by denying combination, or such trisling matter; demurrer set aside. 2 P. Will. 286.

Where a defendant has demurred, he may assign another cause of demurrer at the bar, paying costs; and if such cause of demurrer is over-ruled, he ought to pay double costs; but where a defendant

has pleaded, and there is no demurrer in court, he cannot demur at the bar, though he would pay costs. Durdant v. Redman, 1 Vern. 78.

[See forms of demurrers postea.]

More of pleas.— And bere of answering, pleading and demurring to the same bill.

HERE there is a commission to take an answer only, the defendant cannot put in a pleas or demorrer. Loyd and Gunter, 1 Vern. 275.

Where the defendant answers to part, and pleads to all other matters not answered unto, the plaintiff cannot put in exceptions to the answer, till he has first argued the plea, or obtained an order, that the plea shall stand for an answer, with liberty to except to the matters not pleaded unto. Dannell and Rejney, 1 Vern. 344.

Where a defendant has demurred, he may affigure another cause of demurrer at the bar, paying costs; and if such cause of demurrer is over-ruled, he ought to pay double costs; but where a defendant has pleaded, and there is no demurrer in court, he cannot demur at the bar; though he would pay costs. Durdant and Redman, 1 Vern. 78.

Though a person may plead to one part of a bill, and demur to another, yet he cannot, because of the inconsistency, plead and demur to one and the same part of the bill. Trin. 1728. Cotter and Layer. For the plea over-rules the demurrer: And for the same reason he cannot demur and answer to the same part of the bill. 3 Will. Rep. 80. Jones against The Earl of Strafford & al Mich. 1730.

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On time given to answer, defendant may put in a plea; for that is an answer, and on oath; but cannot put in a demurrer. 2 Will. Rep. 464.

Plaintiff's commissioners may refuse to execute commission unless they may read the answer, and six days

days notice given them (or one of them) of the commillion, which the clerk in court takes care to do in the label of the dedimus.

If a commission be granted, and notice given of executing it, and no countermand in three or four days, according to the distance of places and not executed, the court, on motion, will order costs to be taxed. Chan. Ca. 109.

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If any of the commissioners die, and the parties think that the commissioners remaining are not proper alone to execute the same, then it will be necessary, if the parties cannot agree upon a commissioner to stand in his place, for the defendant to apply by petition to the Master of the Rolls, praying him to strike the names, and appoint which of them shall stand, and at the same time pray for leave to renew the commission.

A commission to plead, answer or demur.

CEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and fo forth, To-greeting. Whereas A. B. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery against C. D. defendant; And whereas we have by our writ lately commanded the faid defendant to appear before us in our faid Chancery, at a certain day now past, to answer the said bill; Know ye, that we have given unto you, any three or two of you, full power and authority, in pursuance of the special order of our said court, to take the answer of the said defendant to the said bill on his corporal oath, upon the Holy Evangelifts; or his plea on his corporal oath, to be administered by you, any three or two of you; or his plea or demurrer without oath, to be respectively made to the aid bill: And therefore we command you, any three three or two of you, that at fuch certain day and place as you shall think sit, you go to the said defendant, if he cannot conveniently come to you, and take his answer, plea and demurrer respectively, as aforesaid, to the said bill, the same being distinctly and plainly wrote upon parchment; and when you shall have so done, you are to send the same closed up under the seals of you, any three or two of you, unto us in our said Chancery—whereso ever it shall then be, together with this writ. With ness ourself at Westminster the—day of—in the—year of our reign.

A commission to take a Quaker's answer.

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GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, de fender of the faith, and so forth, To - greeting. Whereas A. B. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery against C. D. defendant: And whereas we have by our writ lately commanded the faid de-Endant to appear before us in our faid Chancery at a certain day now past, to answer the said bill; but forasmuch as the said C. D. is one of the different commonly called Quakers, as is alledged; Know ye therefore, that we have given unto you, any three or two of you, full power and authority to take the answer of the said defendant to the said bill, upon his folemn declaration and affirmation, to be made before you, any three or two of you, according to the form and tenor of the flatute in that case made and provided: Therefore we command you, any three or two of you, that at fuch certain day and place as you shall think fit, you go to the faid defendant, if he cannot conveniently come to you, and take his answer to the faid bill, as afore faid, the faid answer being distinctly and plaint WILE ķ

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wrote upon parchment: And when you shall have so taken them, you are to send the same closed up under the seals of you, any three or two of you, unto us in our said Chancery——wheresoever it shall then be, together with this writ. Witness,

A commission to assign a guardian, and to take the answer by such guardian.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth, To-greeting. Whereas A. B. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery against C. D. defendant: And whereas we have by our writ lately commanded the faid defendant to appear before us in our faid Chancery at acertain day now past, to answer the said bill; but forafmuch as the faid C. Dr is an infant under age. and cannot answer the said bill, nor defend this suit, without having a guardian affigned in that behalf Know ye therefore, that we have given unto you, my three or two of you, full power and authority, in pursuance of the special order of our said court, to allign and appoint a guardian for the aforesaid infant, and to take the answer of the said infant by such guardian to the faid bill: And therefore we command you, any three or or two of you, that at such certain day and place as you shall think fit, ou go to the faid defendant, if he cannot convepiently come to you, and affign and appoint a guarian for the aforesaid infant, and take the answer f the faid infant by such guardian, to the said bill, o fuch guardian's corporal oath upon the Holy evangelists, to be administered by you, any three two of you, the faid answer being distinctly and lainly wrote upon parchment; and when you shall lo L. I. E e pave have so taken the said answer, you are to send the same closed up under the seals of you, any three or two of you, together with your certificate of your having affigned and appointed such guardian as a foresaid, and this writ, unto us in our said Chancery—wheresoever it shall then be. Witness, &.

A commission to assign a guardian, and to take the infant's answer, and the answers of other defendants.

GEORGE the third, by the grace of God of Great Britain, France, and Ireland, King, defender of the faith, and fo forth, Togreeting. Whereas A. B. complainant; hath lately exhibited his bill of complaint before us in our court of Chancery against C. D. E. F. and G. H. defendants; And whereas we have by our writ lately commanded the faid defendants to appear before us in our faid Chancery at a certain day now past, to answer to the faid bill; but forafmuch as the faid C. D. is an infant under age, and cannot answer the faid bill, nor defend this fuit without having a guardian affigned in that behalf; Know ye therefore, that we have given unto you, any three or two of you, full power and authority, in purfuance of the special order of our faid court, to affign and appoint a guardian for the aforefaid infant, and to take the answer of the faid infant by fuch guardian; and the answer of the faid other defendants to the faid bill? And therefore we command you, any three or two of you, that at fuch certain day and place, as you shall think he you go to the faid defendants, if they cannot conveniently come to you, and affign and appoint a guardian for the aforefaid infant, and take the answer of the faid infant by fuch guardian, and the answers of the faid other defendants to the faid bill, on their corporal oaths upon the SVAN .: Holy

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Holy Evangelists, to be administred by you, any three or two of you, the said answers being diffinctly and plainly wrote upon parchment; and when you shall have so taken the said answers, you are to send the same closed up under the seals of you, any three or two of you, together with your certificate of having assigned and appointed such guardian as aforesaid, and this writ unto us in our said Chancery—wheresoever it shall then be. Witness, &c.

A commission to take the infant's answer by his guardian already assigned him, and the answer of another defendant.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth, Togreeting. Whereas A. B. an infant, by his next friend, complainant, hath lately exhibited his bill of complaint before us in our court of Chancery, against C. D. Gr. defendants; And whereas we have by our writ lately commanded the faid defendants to appear before us in our faid Chancery at a certain day now past, to answer the said bill; And whereas the faid C. D. hath a guardian already affigned him - Know ye therefore, that we have given unto you, any three or two of you, full power and authority to take the answer of the said defendant C.D. an infant, by his guardian already alligned him, and the answer of the faid other defendant, to the faid bill; and therefore we command you, any three or two of you, that at such certain day and place, as you shall think fit, you go to the faid defendants, if they cannot conveniently come to you, and take the answer of the said defendant, the infant, by his guardian already affigned, and the answer of the other defendant to the said bill, on Ec2 their

their corporal caths upon the Holy Evangelists, to be administred by you, any three or two of you; the said answers being distinctly and plainly wrom upon parchment; and when you shall have so taken the said answers, you are to send the same closed up under the seals of you, any three or two of you, and this writ unto us in your said Chancery—wheresoever it shall then be. Witness, &c.

A commission to take the plea, answer or demurrer of infants by their guardian already assigned.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and fo forth, To greeting. Whereas A. B. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery against C. D. and E. F. infants, defendants: And whereas we have by our writ lately commanded the faid defendants to appear before us in our faid Chancery at a certain day now past, to answer the said bill; and whereas the said C. D. and E. F. are infants, and have a guardian already affigned them; Know ye, that we have given unto you, any three or two of you, full power and authority, in pursuance of the special order of our faid court, to take the plea, answer or demurrer of the faid infants to the faid bill, by their guardian already affigned; and therefore we command you, any three or two of you, that at fuch certain days and places, as you shall think fit, you go to the faid defendants, if they cannot conveniently come to you, and take the answer of the said infants, by their guardian already affigned, to the faid bill, on fuch guardian's corporal oath upon the Holy Evangelifts, or their plea on their guardian's corporal oaths, to be administred by you, any three or two of you, upon the Holy Evangelists, or their plea and demurrer

demorrer without oath to be respectively made to the said bills, the said answer, plea or demurrer being distinctly and plainly wrote upon parchment: And when you shall have so taken them, you are to send the same closed up under the seals of you, any three or two of you, unto us in our said Chancery—wheresoever it shall then be, together with this writ. Witness, &c.

A commission to take the answer of a corpo-

EORGE the third, by the grace of God, G of Great Britain, France, and Ireland, King, defender of the faith, and fo forth, Togreeting. Whereas A. B. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery against C. D. E. F. &c. defendants; And whereas we have by our writ commanded the faid defendants to appear before us in our faid Chancery at a certain day now paft; to answer the said bill; but forafmuch as the faid C.D. E.F. Gr. are a body corporate, and ought and have been accustomed to put in their apswer by a general confent; Know ye, that we have given unto you, any three or two of you, full power and authority to take the answer of the faid" defendants to the faid bill, under the common feal of the faid corporation: And therefore we come? mand you, any three of two of you, that at fuch certain day and place as you fhall think fit, you go to the faid defendants, if they cannot conveniently come to you, and take their answer to the faid bill under their common feal; the faid answer being distinctly and plainly wrote upon parchment: And when you shall have so taken it, you are to send the time closed up under the feals of you, any three or two of you, unto us in our faid Chancery wherefoever it shall then be, together with this writ. Witness, &c.

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A commission to take the answer of alcording poration, and they answer of other defends ants.

EORGE the third, by the grace of God, Toof Great Britain, Brance, and Ireland, King, defender of the faith; and fo forth, To greeting. Whereas A. B. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery against C. D. E. F. &c. defendants; And whereas we have by our writ commanded the faid defendants to appear before us in our faid Chancery at a certain day now past, to answer the said bill; but forasmuch as the said C. D. &c. are a body corporate, and ought and have been accustomed to put in their answer by a general confent; Know ye, that we have given unto you, any three or two of you, full power and authority to take the answer of the faid defendants the corporation, to the faid bill under the common feal of the faid corporation, and the anfwer of the faid other defendants on their corporal oath upon the Holy Evangelists, to be administered by you, any three or two of you; And therefore we command you, any three or two of you, that at such certain day and place, as you shall think fit, you go to the faid defendants, if they cannot conveniently come to you, and take the answer of the faid defendants the corporation to the faid bill under their common feely and the answer of the faid other defendants on their oath as aforefaid; the faid answers being diffinctly and plainly wrote upon parchment; And when you shall have so taken them, you are to fend the same closed up under the feals of you, any three or two of you, unto us in our faid Chancery - wherefoever it shall then be, together with this writ. Witness, &c. CHAP.

XI d. A. H. Duft directly at

Of replying, rejoining and joining in commission; and berein of dismissions before bearing.

WHEN a full answer is in, and the plaintiff intends to proceed, he may forthwith file a replication.

Replications are either general or special.

1. A general replication is a reply by the plaintiff to the answer of the defendant, and is an averring or inforcing of the allegations in the bill, and an avoiding or denying the matters in the answer.

2. A special replication is only putting some part of the bill in issue, and so much of the defendant's answer to that part of the bill; and in that case witnesses are to be examined only to those parts, and not to any other part of the bill or answer; but a special replication very seldom happens; though in many cases it would be for the plaintiff's benefit, and not make the pleadings so prolix as they generally are.

A decree of dismission may be pleaded in bar to a new bill, though not signed and inrolled. Vide

1 Vern. 310.

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The replication must be general, except the defendant by his answer offers new matter, which will not be brought into issue by the bill and answer, or where he denies only one, or some few points of the bill. Vide Ord. Chan. 122.

And if it be needful to prove one, or a few particular points, the plaintiff ought to reply to those points only, on pain of costs; but the court generally orders costs at the hearing, as they think fit.

The The Baying of The

The replication affirms and avers the bill to be true; and it is to be fhort, and must directly and pertinently pursue the substance of the bill, and confess and avoid, or traverse or deny the answer: And it must by no means be a departure from the bill.

A defendant in his plea of a purchase for a valuable consideration omits to deny notice; if the plaintiff replies to it, all the defendant has to do is to prove his plea; and it is not material if the plaintiff proves notice, for it was the plaintiff's own fault that he did not set down the plea to be argued, in which case it would have been over-ruled. 3 P. Will. Rep. 94.

A plaintiff having put matters in his replication, which were not contained in the bill, and which the plaintiff knew of at the exhibiting the bill; the defendant pleaded and demurred to the replication, which the court allowed of. 1 Chan. Rep. 259.

When the defendant doth demur, or disclaim

only to a bill, the plaintiff cannot reply.

Where there is a plea and answer to the same bill, and the plaintiff replies to the plea only, it will be irregular; for the replication must be to the answer as well as to the plea. The cause put off for that irregularity. Nichol and Wiseman, 2 Vern. 46.

If after a plea or demurrer to a special replication allowed, the plaintiff may be admitted to put in a general replication. Q. & vide 1 Vern. 351. where it was urged by counsel that he may; but the

court refused to give any opinion.

The plaintiff set down his cause to be heard on bill and answer, and had a decree against the defendant by default; and when the defendant came to shew cause against the decree, it was altered in his favour; the plaintiff petitioned to rehear the cause, and at the rehearing prayed leave to reply to the desendant's answer, and had it, paying costs.

Mich.

Of Replications and Rejoinders, &c.

Mich. 1669. Lord Donnegall and Warr. Eq. Cof.

Abr. 43.

In many cases, though the cause require no witnesses to be examined, yet it may be necessary for the plaintist to reply, whereby the defendant will be put upon proof of his answer, and the plaintist admitted to prove the matters of his bill: But if the plaintist reply to an answer, and without rejoinder or rules brings the cause to a hearing, the answer shall be taken wholly true, as if there had been no replication; for the opportunity which the defendant had of proving his answer is taken from him. 2 Chan. 21.

And if the fubpana to rejoin be not served, &c. though it be sued out, the cause may be heard on

bill and answer. Id. ib.

If plaintiff replies to the defendant's answer, but never serves him with a subpana to rejoin, he may rejoin gratis, in order to prove his answer, though the plaintiff cannot force him to rejoin without a subpana. Moseley 123. pl. 77. Anon.

Where witnesses have been examined, and no replication, the court at the hearing, or even after a decree, will order a replication to be filed, nunc protunc. A cause is at iffue by the replication, and a rejoinder is never actually filed. Moseley 296.

It is now the course of the court, that the plaintist beallowed to the end of the third Term after coming in of the defendant's answer to file his replication, exclusive of the Term the answer is filed in.

Replications need not be figned by counfel. The clerk in court's fee for filing a replication is

51. 10d. including stamps.

It is the common practice for the plaintiff (after he has ceased prosecution for three Terms after replication filed, and the defendant moves to dismiss the bill) to pray leave of the court to withdraw his replication and amend his bill, by which means the suit fuit is retained, to the great vexation and delay of the defendant (as the Lord Chancellor was pleafed to declare lately) fo that we may perhaps see some alteration in this point of practice, his Lordship having refused to retain the plaintiff's bill upon those terms.

If a plaintiff obtains an order to amend his bill, which he does not do in a reasonable time, yet this shall not be such a proceeding as to keep his bill on foot, and hinder its being dismissed for want of

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profecution.

Note ; If a bill be dismissed for want of a replication, or other proceeding, yet the court, on application, often orders that the bill be retained on payment of cofts out of purle; in which case the defendant may apply to have such order discharged, especially if the plaintiff has been guilty of delay. But after joining in commission (yea, before the names are ftruck) the defendant hath no method left to gerrid of his cause, bur by obtaining a commission ex parte, and after the depositions are returnedato get a rule entered to pals publication, and the cause fer down and heard at his own request. And when your witnesses live in town, or within ten miles thereof, a rule must be entered to produce witnesses, and interrogatories must be exhibited inthe examiner's office for examination of witnesses thereing a rothe end of the third I'erm arter conservation

On dismissing a bill before replication, it is not necessary to serve a notice of motion; but it is usual only for the clerk in court to leave a note at the seat of the adverse clerk with himself, or his clerk or agent there, that he will dismiss the bill for want of prosecution, and so get the Six-clerk's certificate, on which the motion is grounded, and moved of course without any affidavit.

After a replication put in, if the plaintiff ceases all manner of prosecution for three Terms exclusive,

the bill may, upon the Six clerk's certificate, and giving notice of motion and an affidavit thereof filed, (if not defended by the plaintiff's countel) be dismiffed.

And observe, that a plaintiff may, and often does, dismiss his own bill with costs to be taxed, after appearance, with full cost to be taxed, by the statute for amendment of the laws.

If a bill be preferred for a matter or sum * Be- The neath the dignity of the court, it may be dismissed not take as well upon motion as demurter. Com. Rep. 715. cognizance of a sum originally below the

dignity of it, the by the neglect or milmanagement of the party it had amounted to a proper fum. Moseley 47. pl. 31.

Note; If a bill is exhibited in any person's name without his privity, the court, upon shewing it, will dismiss the bill, at least as to him, if there be more plaintists; and to that end he may either come into court and disclaim the suit, or give power to counsel in writing to move that it may be dismissed, and it will be dismissed, with costs against the persons that exhibited the bill.

The warrant of the counsel, after it is read, is

taken and kept by the register.

So if the bill be exhibited in the wife's name against the husband, upon affidavir that she knows nothing of it, nor consented to it, it may be dismissed on motion.

In case of a dismission for want of prosecution (and not on the merits of the cause) on motion and excuse of the delay, and paying costs out of purse, or to be taxed, of the dismission of the plaintiff's bill, by special order it may be retained, or he may have leave given to exhibit a new bill; the doing of which is merely at the discretion of the court: But in this case he ought to proceed with effect in his cause, in which if he fails, it will come a second

a second time to be dismissed for want of prosecu-

tion, with costs to be taxed by a master.

But tho' this proceeding of dismissing bills for want of profecution, with cofts, is laid down as an established rule of the court, yet cases may be found where it will not hold good: As for example; where a bill is filed against several defendants. it often falls out that one defendant answers in due time, when at the same time another defendant is profecuted for want of an answer, and the plaintiff cannot proceed in his cause until all the answers are in; therefore whenever this case happens, and where it appears to the court, that the plaintiff is going on with his fuit, and profecuting for want of an answer, it has always been allowed as a good cause to discharge the order of one single defendant, under pretence of dismissing the bill for want of profecution.

Note: A plaintiff here may either make a general election to proceed here or at law, or a special election, as to proceed for part here, and the other part at law; but the court will judge of the reasonableness of that special election. Gilb. Rep. in

Eq. 183.

3 (CCO)

A dismission upon an election to proceed at lawis not peremptory, but the plaintiff may, after he has failed at law, bring a new bill. 2 Vern. Ca. 24.

Countefs of Plymouth and Bladen.

Where the plaintiff sues both at law and in equity for the same thing, he will be put to make his election in which court he will proceed, but he needs not make such election till the defendant has answered. 3 Will. Rep. 90. Jones v. Earl of Strafford.

An order for plaintiff to make his election, was discharged on motion, because defendant had pleaded the statute of limitation, and the plea had not

been argued. Mosely 210. pl. 19.

The

The order for making an election, recites, only that the plaintiff profecutes the defendant at law and in equity for one and the same matter, so that the defendant is doubly vexed; wherefore it provides that the plaintiff, his clerk in court and attorney at law having notice of the order, within eight days after such notice make his election in which court he will proceed, and if he elects to proceed in this court, (the Chancery) then the proceedings at law are by that order to be stayed by injunction. But if the plaintiff shall elect to proceed at law, or in default of such election by the time aforesaid, his bill is to be dismissed with costs.

And note; If one makes a special election to Plaintiff is proceed at law as to part, and in equity as to other make his part; with regard to what the plaintiff in equity election till defendant elects to proceed at law, his bill ought to be dishath an-missed with costs. By Sir Joseph Jekyl, Master of wered. the Rolls, Mich. 1723, Anonymous, 3 Will. Rep. 90.

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Quere, Whether after a plea and demurrer to a special replication, the plaintiff may be admitted to put in a general replication? Vide 1 Vern. 351.

Thus much may in this place suffice touching dimissions; concerning which I propose to treat more particularly hereaster.

A Replication.

The replication of A. B. complainant, to the feveral answers of C. D. defendant.

THIS repliant, saving unto himself all and all manner of advantages of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer

es Enmed som

answer of the defendant is uncertain, where and infufficient to be replied unto by this repliant without that that any other matter or thing what. foever in the faid answer contained, material or effectual in the law to be replied unto, and herein not replied unto, confessed and avoided, travelled or denied; is true; all which matters and things this repliant is, and will be ready to aver and prove. as this honourable court thall award : And humb's prays, as in and by his faid bill he hath afready by injunction. But if the plannit that chayard proceed at law, or in default of fuch election by

The replication being ingrossed on parchment with double 12 d. stamps, is to be marked near the top thereof with the day of the month and year when filed, and to be subscribed near the bottom on the Jeft fide, with the furname of the clerk in court who files it and also the Term in which the bill was filed; with the furname of the defendant's Sixclerk. Whis done, the clerk in court enters it in his cause-book, and then files it with his Six-clerk, acquainting the defendant's clerk in court by a fort hote in writing that he has fo done. siles laped

Thus much for replying; proceed we now to rejoining, and joining in commission.

Rejoining.

ND here we may observe, That where the plaintiff files his replication in Term, he may fue out a subpana against the defendant to rejoin, returnable at a certain day in Term-time, and may, if he pleases, serve the defendant therewith: But this rarely happens, unless where the defendant lives in town, and may be easily served; for it is most usual to apply by motion or petition, that a subpana to rejoin, returnable immediate, may be iffued against the defendant, and that service thereof 1500 20

De Replications and Rejainders, &c.

thereof on the defendant's clerk in court may be deemed good service of the defendant; which is of course. And to this is also added (in a country cause) that the plaintiff may be at liberty to take out a commission for examination of witnesses, and that the defendant may join and strike commission-ers names in four days after notice thereof to his clerk in court, or in default thereof, that the plaintiff may have a commission to examine witnesses, directed to his own commissioners, which is also granted of course.

And here it may not be amiss to observe, that there can be no order granted to pass publication, or for setting down the cause to be heard, without giving a notice of motion and obtaining an order for that purpose: But now the court seldom, unless in extraordinary cases, grants an order to pass publication, or set down a cause to be heard; but the usual method now is to pass publication by rules, and after publication so passed, the plaintiff may of course set down the cause the succeeding Term after

publication passes.

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When the plaintiff intends to go to commission to examine witnesses, he must serve the defendant with a subpana to rejoin, or get an order to serve his clerk in court with a subpana to rejoin, returnable immediate (except the defendant will rejoin gratis) before he can have his commission; and on the return thereof, the plaintiff may (by an order for that purpose) oblige the defendant to join and strike commissioners names, or in default thereof, take out a commission for examination of witnesses ex parte.

Joining in commission.

THE party's clerk in court intitled to the commission, applies to the clerk of the other side to join in commission, which is done in manner follow-

following, viz. First, he who has the carriage of the commission, names a commissioner, then the other does so also, and so alternately, till each of them has named four, which they enter in their commission-books; and after each hath consulted his client, he strikes out two of the four names in this manner; first, he that hath the carriage of the commission strikes out one of those that were named by the other party, and then the other strikes out one of those that were named by him, and so each of them strikes out one more; which being done, the four remaining are the commissioners.

But if a defendant joins in a commission, and afterwards refuses to strike commissioners names, the court, on petition, will strike out such two of them as they please; the plaintist's clerk in court being at liberty, notwithstanding the defendant's clerk in court refuses to strike plaintist's commissioners names, to strike out which two of the defendant's commissioners names he shall think sit; and the commission shall go to such of the four commission,

ers as are left standing.

Commissioners ought to be indifferent persons. And after names are struck, and one of the parties find that the adverse party's commissioners, or one of them, is of kin, or counsel, or solicitor for the party, he may by motion or petition complain thereof to the court, who will order such party to name two other indifferent commissioners instead of that commissioner so complained against, and the other side to strike out one of those two so named.

N. B. As to the forms of rejoinders, and allo furrejoinders, and rebutters, or ad-furrejoinders, treated of by several modern authors, they are all of them now quite disused; therefore I shall say no more about them.

When witnesses are examined in the examiners office, the plaintiff, after he has examined one or more of his witnesses, as before, may enter a rule in the house-book to produce witnesses, and give the defendant's clerk notice thereof, and at the same time must leave a note with the entring register, as follows;

23d Oct. 1744.

A. B. plaintiff, C. D. defendant. A day is given to the defendant to produce witnesses.

E. F. clerk for the plaintiff.

Seven or eight days after giving which rule, you may enter in like manner another rule for passing publication, and give notice thereof as before, and leave a note with the entring register, as follows;

Ift Nov. 1744.

A. B. plaintiff, C. D. defendant.

n

A day is given to the defendant to shew cause why publication should not pass.

E. F. clerk for the plaintiff.

But if the plaintiff takes out a commission for examination of witnesses in the country, and if the defendant does not join therein, (i. e.) by naming commissioners on his part, or if he does join in such commission but examines no witnesses, then the plaintiff's clerk ought, upon the return of such commission, to give two like rules, as before.

But if both sides examine witnesses by such commission, then upon the return of such commission the plaintiss need give only one rule, Vol. I.

433 Df Replications and Rejoinders. &c. as before, for passing publication, which is as follows:

22d Nov. 1744.

A. B. plaintiff, C. D. defendant.

A day is given to the defendant to shew cause why publication should not pass upon a joint commission.

E. F. clerk for the plaintiff.

Note; Each of the rules as above, in strictness passes that day seven-night after the respective dates of such rules; and after the expiration of the rule given for passing publication, no witness can be examined on either side, unless an order be obtained for enlarging publication before such rule expires, or the plaintiff and defendant's clerks agree to enlarge publication by consent.

ERRATA.

Page 39, line fifth, for court read course; P. 48, in notes, for separation read sequestration.

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